Supreme Court, U. S.
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80-586

No. .....

IN THE

Supreme Court of the United States

October Term, 1980

CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Second Appellate District — Division One.

PETITION FOR WRIT OF CERTIORARI.

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Questions Presented.

Whether punitive damages are recoverable under the Jones Act (46 U.S.C. § 688) and the federal doctrine of unseaworthiness given that:

A. The California court's decision, allowing recovery of punitive damages, conflicts with this Court's holdings that the Jones Act provides only for the recovery of compensatory damages;

B. The California court's decision conflicts with the decision of the Sixth Circuit Court of Appeals holding that punitive damages are not available under the Federal Employers' Liability Act (45 U.S.C. § 51 *et seq.*), (''FELA'') an act expressly incorporated into the Jones Act;

C. Under established federal law, the doctrine of unseaworthiness and the Jones Act are independent theories of liability allowing for only one recovery of compensatory damages;

D. By judicially creating a new federal measure of damages, the California court has made an unconstitutional and unwarranted intrusion into the power of Congress to legislate in the area of maritime law.

Additional Parties.

The Superior Court of Los Angeles County of the State of California is an additional party to this action.

TABLE OF CONTENTS

Page

Questions Presented i
Additional Parties i
Opinion Below 1
Jurisdiction 1
Statutory Provisions Involved 1
Statement of the Case 1
Argument 4

I.

Summary of Argument 4

II.

The Measure of Recovery in Jones Act Cases Is Limited to Compensatory Damages 5

III.

Since the Jones Act Is Governed by the Federal Employers' Liability Act, the California Court's Decision Conflicts With the Circuit Court of Appeals' Decision Which Specifically Precludes Punitive Damages 7

A. The Law of the FELA Is Controlling in Jones Act Cases 7

B. Since Punitive Damages Are Not Recoverable Under the Federal Employers' Liability Act, They Are Not Recoverable Under the Jones Act 10

IV.

The Doctrine of Unseaworthiness and the Jones Act Are Independent Theories of Liability Allowing for the Recovery of the Same Measure of Compensatory Damages 11

Page

V.

A State Court Cannot Judicially Legislate a Federal Measure of Damages 13

A. The California Court's Decision Is a Constitutionally Impermissible Intrusion Into Federal Maritime Law 13

B. The California Court's Decision is an Inappropriate Expansion of a Federal Statute 16

Conclusion 19

INDEX TO APPENDICES

Appendix A. Opinion of the Court of Appeal ..... App. p. 1

Dissenting Opinion, Hanson, J. 21

Order Denying Hearing 25

Minute Order, Dated Nov. 5, 1979 26

Order Denying Petition for Writ of Mandate/ Prohibition 28

Order Granting Hearing 29

Appendix B. Statutory Provisions Involved 30

TABLE OF AUTHORITIES

Cases — Page

Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960) 19

Askew v. American Waterways Operators, Inc., 411 U.S. 325 (1973) 15

Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927) 11, 12

Baptiste v. Superior Court, 106 Cal.App.3d 87 (1980) 4, 5, 9, 10, 11, 13, 20

Blake v. Port Everglade Towing Co., 425 F.2d 662 (5th Cir. 1970) 6

Butwinski v. Pennsylvania R.R. Co., 249 F.2d 644 (2d Cir. 1957) 6

Chelentis v. Luckenback S.S. Co., Inc., 247 U.S. 372 (1918) 15, 16

Cleveland Tankers v. Tierney, 169 F.2d 622 (6th Cir. 1948) 6

Cox v. Roth, 348 U.S. 207 (1955) 9, 15

Dorsey v. Steelman, 1 Wash.App. 85, 459 P.2d 416 (1969) 19

Downie v. U.S. Lines Co., 359 F.2d 344 (3rd Cir. 1965) 6, 7

Engel v. Davenport, 271 U.S. 33 (1926) 8, 15

Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) 5

Fay v. Parker, 53 N.H. 342 (1872) 19

Ferguson v. Moore-McCormack Lines, Inc., 352 U.S. 521 (1957) 9

Foudree v. Iron City Sand & Gravel Co., 315 F.2d 647 (3rd Cir. 1962) 7

Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942) 15

Page

German v. Carnegie-Illinois Steel Corp., 156 F.2d 977 (3rd Cir. 1946) 12

Hopson v. Texaco, 383 U.S. 262 (1966) 9

Int'l Bhd. Elec. Workers v. Foust, 442 U.S. 42 (1979) 18

International Stevedore Co. v. Haverty, 272 U.S. 50 (1926) 9

Jamison v. Encarnacion, 281 U.S. 635 (1930) 9

Johnson v. United States, 333 U.S. 46 (1948) 9

Jordine v. Walling, 185 F.2d 662 (3rd Cir. 1950) 11, 12

Kelley v. Midland S.S. Line, Inc., 162 F.Supp. 68 (W.D.N.Y. 1956) 12

Kernan v. American Dredging Co., 355 U.S. 426 (1958) 8

Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 (1920) 14

Kozar v. Chesapeake & Ohio Ry. Co., 449 F.2d 1238 (6th Cir. 1971) 7, 10

Lakeshore & Michigan Southern Ry. Co. v. Prentice, 147 U.S. 101 (1893) 5

Lee v. Pacific Far East Line, Inc., 566 F.2d 65 (9th Cir. 1977) 12

Leith v. World Transport Co., 321 F.2d 591 (3rd Cir. 1963) 13

Lindgren v. United States, 281 U.S. 38 (1930) 9

Maki v. Aluminum Building Products, 436 P.2d 186 (Wash. 1968) 19

Maryland Casualty v. Cushing, 347 U.S. 409 (1954) 15

Page

McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958) 11, 12
McCarthy v. American Eastern Corp., 175 F.2d 724 (3rd Cir. 1949) 12
McCoy v. Arkansas Natural Gas Co., 175 La. 487, 143 So. 383 (1932) 19
Michigan Central R.R. Co. v. Vreeland, 227 U.S. 59 (1913) 10
Miller v. Kingsley, 194 Neb. 123, 230 N.W.2d 472 (1975) 19
Munson v. Raudonis, 387 A.2d 1174 (N.H. 1978) 19
O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943) 9
Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928) 6, 11, 16
Panama R.R. Co. v. Johnson, 264 U.S. 375 (1924) 6, 8, 16
Paris Air Crash v. Plaintiffs in MDL 172, 622 F.2d 1315 (9th Cir. 1980) 16, 17
Pate v. Standard Dredging Corp., 193 F.2d 498 (5th Cir. 1952) 12
Paumier v. Barge BT 1793, 395 F.Supp. 1019 (E.D.Va. 1974) 12
Prather v. Eisenmann, 202 Neb. 1, 261 N.W.2d 766 (1978) 19
Renner v. Rockwell, 403 F.Supp. 849 (C.D.Cal. 1975) 5
Renner v. Rockwell, 587 F.2d 1030 (9th Cir. 1978) .. 5
Ryan v. Lines Co., 303 F.2d 430 (2d Cir. 1962) 6

Page

Southern Pacific v. Jensen, 244 U.S. 205 (1917) 14, 15

State Ex Rel. Burlington Northern, Inc. v. District Court, 548 P.2d 1390 (Mont. 1976) 10

Steele v. Johnson, 458 P.2d 889 (Wash. 1969) 19

The Lottawana, 88 U.S. (21 Wall.) 558 (1874) 13

Troupe v. Chicago Duluth and Georgian Bay Transit Co., 234 F.2d 253 (2d Cir. 1956) 12

United Mine Workers v. Patlin, 211 F.2d 742 (1954) 17

Van Beek v. Sabine Towing Co., 300 U.S. 342 (1937) 6, 9

Ventoza v. Anderson, 14 Wash.App. 882, 545 P.2d 1219 (1976) 19

Vratsenes v. N.H. Auto. Inc., 289 A.2d 66 (N.H. 1972) 19

Constitution

United States Constitution, Art, I, Sec. 8 ..... 1, 13

United States Constitution, Art. III, Sec. 2 ..... 1, 13

Statutes

Federal Employers' Liability Act, Sec. 1 (45 U.S.C. § 51) 1, 6, 9

Federal Employers' Liability Act, Sec. 2 (45 U.S.C. § 52) 1, 9

Federal Employers' Liability Act, Sec. 6 (45 U.S.C. § 56) 1, 8

Federal Employers' Liability Act, Sec. 7 (45 U.S.C. § 57) 1, 9

United States Code, Title 28, Sec. 1257(3) 1

Page

United States Code, Title 28, Sec. 1333 (Judiciary Act) 1, 13

United States Code, Title 28, Sec. 1441(c) 12

United States Code, Title 45, Sec. 51, et seq. (Federal Employers' Liability Act) ..... i, 7

United States Code, Title 46, Secs. 563-568 13

United States Code, Title 46, Sec. 688, et seq. (Jones Act) ..... i, 1, 5, 8, 14

Textbooks

1A Benedict, The Law of Admiralty, Sec. 32 (7th ed. 1980) 6

2 Benedict, The Law of Admiralty, Sec. 86 (7th ed. 1980) 6

Long, Punitive Damages: An Unsettled Doctrine, 25 Drake L.Rev., pp. 875-876, 877, 880, 881 (1976) 18

Norris, M., The Law of Seamen, Sec. 678, p. 336 (3rd ed. 1970) 11

Note, Exemplary Damages in the Law of Torts, 70 Harv. L.Rev., pp. 517, 520-522 (1957) 18

OPINION BELOW.

The opinion of the Court of Appeal of the State of California, Second Appellate District — Division One, reported at 106 Cal.App.3d 87, appears in the Appendix A at pp. 1-24 *infra*. The California Supreme Court's denial of the Petition for Hearing also appears in Appendix A at p. 25 *infra*.

JURISDICTION.

The Court of Appeal of the State of California, Second Appellate District — Division One entered its judgment and opinion on May 23, 1980 and denied a timely Petition for Rehearing without a ruling on June 22, 1980. The Supreme Court of the State of California denied a timely Petition for Hearing on July 16, 1980 and Petitioner filed its Petition for Certiorari within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

STATUTORY PROVISIONS INVOLVED.

The text of the following pertinent constitutional and statutory provisions are set forth in Appendix B *infra:*

UNITED STATES CONSTITUTION article I, section 8 & article III, section 2

46 U.S.C. § 688

45 U.S.C. §§ 51, 52, 56 & 57.

STATEMENT OF THE CASE.

A seaman, Gilbert Baptiste (Baptiste), brought suit in a California state court, against his employer, Standard Oil Company of California (Standard), for alleged personal injuries sustained while in the course of his employment.[1] The

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[1]Jurisdiction of the state court to hear the case rests on the Jones Act (46 U.S.C. § 688, *et seq.*) and the "saving to suitors" clause of the Judiciary Act (28 U.S.C. § 1333).

complaint was generally pled under the Jones Act and the maritime doctrine of unseaworthiness and sought compensatory damages.

Four and one-half years after filing his complaint, Baptiste amended his complaint to allege punitive damages. Standard filed Demurrers and a Motion to Strike the punitive damage allegations on the ground that the Jones Act and the federal doctrine of unseaworthiness provide only for recovery of compensatory damages. After oral argument, the trial court granted Standard's motion and struck the punitive damage allegations. In his ruling the trial judge acknowledged that only federal law applies, and that under federal law there is no reliable authority to support the imposition of punitive damages. (A copy of the Minute Order of the Los Angeles County Superior Court appears in Appendix A at p. 26 *infra*.) Baptiste then filed a Petition for Writ of Mandate and/or Prohibition with the California Court of Appeal. The California Court of Appeal denied the Writ. (A copy of the denial appears in Appendix A at p. 28 *infra*.) Baptiste then petitioned for hearing before the California Supreme Court. The court granted a hearing and ordered the action transferred to the California Court of Appeal which ordered briefing and oral argument. (A copy of the Order appears in Appendix A at p. 29 *infra*.)

In a two to one decision, the California Court of Appeal granted Baptiste's petition and issued its writ directing the trial court to reinstate the punitive damage allegations and prayer in Baptiste's amended complaint. To obtain review of this decision, Standard filed a timely Petition for Rehearing in the California Court of Appeal which was denied by operation of law on June 22, 1980. Standard then sought further review of the decision by filing a timely Petition for Hearing with the California Supreme Court. The California

Supreme Court denied Standard's petition without comment on July 16, 1980. This Petition has been filed within ninety days of that date.

ARGUMENT.

I.

Summary of Argument.

The published decision and order of the California court is totally unprecedented. For the first time in United States legal history a court has held, as a matter of law, that a seaman is entitled to recover punitive damages against his maritime employer. The decision ignores Congress' legislative mandate and this Court's decisions holding that the Jones Act provides only for recovery of compensatory damages.

The decision is also in direct conflict with a decision of the Sixth Circuit Court of Appeals denying recovery of punitive damages in FELA cases and squarely rejects numerous decisions of this Court holding that FELA law is controlling in Jones Act cases. The decision will encourage forum shopping, create conflicts between state and federal courts and seriously erode the power of Congress under the United States Constitution to legislate in the area of maritime law.

The California court has thus totally disrupted federal law as it affects maritime employers and employees and destroyed the necessary uniformity of federal maritime law.[2] Since a substantial federal question is presented and the California decision is in conflict with a decision of the Sixth

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[2]As the dissenting California justice stated:

> "In my opinion it is not only highly improper and presumptuous but also grossly unwise for a California state court of review by judicial fiat to invade the federal jurisdiction and attempt to graft onto federal maritime law a punitive damage claim where none presently exists, thereby destroying the important concept of the need to preserve *uniformity* in maritime tort law regardless of the place of injury." *Baptiste v. Superior Court*, 106 Cal.App.3d 87, 106 (1980) (Appendix A at p. 23).

Circuit Court of Appeals and holdings of this Court, it is essential that this Court review the California decision.

II.

The Measure of Recovery in Jones Act Cases Is Limited to Compensatory Damages.

Rationalizing its erroneous decision allowing recovery of punitive damages in maritime cases, the California court relied upon an opinion vacated by the Ninth Circuit[3] and displayed its misunderstanding of federal law by relying upon a single pre-*Erie* diversity case to generalize about federal common law.[4] The California court also hinged its decision on the fallacious premise that this Court has never waivered from its support of punitive damages as a common law measure of recovery. *Baptiste v. Superior Court, supra* at 96 (Appendix A at p. 9). By failing to rely upon applicable federal law, the court's decision is in direct conflict with decisions of this Court limiting the measure of recovery in a Jones Act case to compensatory damages.

In 1920, Congress enacted what has become known as the Jones Act. 46 U.S.C. § 688. Upholding the constitutionality of the statute, this Court in 1923 recognized that the measure of recovery in a Jones Act action is for com-

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[3]In support of its opinion, the California court relied upon the district court opinion in *Renner v. Rockwell*, 403 F.Supp. 849 (C.D.Cal. 1975). Since the Ninth Circuit vacated and remanded that decision, the opinion is not legal authority. *Renner v. Rockwell*, 587 F.2d 1030, 1031 (9th Cir. 1978).

[4]The California court cited *Lakeshore & Michigan Southern Ry. Co. v. Prentice*, 147 U.S. 101 (1893) for the proposition that punitive damages have long been an integral part of federal common law. The California court's singular reliance upon *Lakeshore* is improper given the modern definition of federal common law after *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), the fact that *Lakeshore* is neither a FELA nor a Jones Act case, and the fact that in 87 years the case has never been cited for the proposition that punitive damages are embodied in federal common law.

pensatory damages.[5] *Panama R.R. Co. v. Johnson*, 264 U.S. 375, 391 (1923). In 1928, this Court emphasized:

> "whether or not the seaman's injuries were occasioned by the unseaworthiness of the vessel or by the negligence of the master or members of the crew, or both combined, there is but a single wrongful invasion of his primary right of bodily safety and but a single legal wrong, *Baltimore S.S. Co. v. Phillips, supra*, 321, for which he is entitled to but one indemnity by way of compensatory damages." *Pacific S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928).

See generally 1A Benedict, *The Law of Admiralty*, § 32 (7th ed. 1980).

Thus, it is the rule that a seaman injured by the tortious conduct of his employer is entitled to a damage award commensurate with the nature and extent of his injury. *Downie v. U.S. Lines Co.*, 359 F.2d 344 (3rd Cir. 1965). Such a damage award will include reimbursement for lost earnings, *Ryan v. Lines Co.*, 303 F.2d 430 (2d Cir. 1962); medical expenses, *Butwinski v. Pennsylvania R.R. Co.*, 249 F.2d 644 (2d Cir. 1957); and pain and suffering, *Blake v. Port Everglade Towing Co.*, 425 F.2d 662, 663 (5th Cir. 1970).

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[5]In an action brought under the death provisions of the Jones Act, the measure of recovery is limited to compensation for pecuniary loss. *Van Beek v. Sabine Towing Co.*, 300 U.S. 342, 347 (1937). The Sixth Circuit, while interpreting § 1 of the FELA (45 U.S.C. § 51), as it applies to the Jones Act discussed this measure of damages:

> "the damages recoverable under the statute are held to be equivalent to compensation for deprivation of the *reasonable expectation of pecuniary benefits* that would have resulted for the continued life of the deceased. *Chesapeake & Ohio Ry. Co. v. Kelly*, 241 U.S. 485 (citation omitted); *American R.R. Co. of Porto Rico v. Didrickson*, 227 U.S. 145, 149 (citation omitted). *The liability is for pecuniary damages and for that only. Michigan Central R.R. Co. v. Vreeland*, 227 U.S. 59 (citation omitted)." (Emphasis added) *Cleveland Tankers v. Tierney*, 169 F.2d 622, 624 (6th Cir. 1948).

See 2 Benedict, *The Law of Admiralty*, § 86 (7th Ed. 1980).

If a seaman's injuries are permanent, he is entitled to reimbursement for loss of future earning capacity. *Foudree v. Iron City Sand & Gravel Co.*, 315 F.2d 647, 650-651 (3rd Cir. 1962). In addition, he may recover compensation for the physical and mental effects of the injury on his ability to normally contribute to the enjoyment of life. *Downie v. U.S. Lines Co., supra* at 347.

As outlined above, compensation for the loss or injury incurred is recognized as the sole measure of damages in an action maintained under the Jones Act. The California court's novel decision to now allow punitive damages is clearly in conflict with long established federal law and must be reversed.

III.

Since the Jones Act Is Governed by the Federal Employers' Liability Act, the California Court's Decision Conflicts With the Sixth Circuit Court of Appeals' Decision Which Specifically Precludes Punitive Damages.

The California court's decision expressly repudiates the long standing principle that the law of the Federal Employers' Liability Act is applicable and controlling in Jones Act cases. Despite the express incorporation of the Federal Employers' Liability Act in the Jones Act, the California court refused to follow applicable law. By so holding, the California court rejected the decision of the Sixth Circuit Court of Appeals in *Kozar v. Chesapeake & Ohio Ry. Co.*, 449 F.2d 1238 (6th Cir. 1971). In *Kozar* the Court held as a matter of law that punitive damages are not available under the Federal Employers' Liability Act.

A. The Law of the FELA Is Controlling in Jones Act Cases.

The Jones Act adopts the law of the Federal Employers' Liability Act (45 U.S.C. § 51 *et seq.*) governing actions

against railroads brought by their employees.[6] In 1926, this Court discussed this incorporation by stating:

> "The adoption of an earlier statute by reference, makes it as much a part of the latter act as though it had been incorporated at full length. (Citations omitted) It brings into the latter act 'all that is fairly covered by the reference (Citations omitted) that is to say, all the provisions of the former act which, from the nature of the subject matter, are applicable to the later act.' " *Engel v. Davenport*, 271 U.S. 33, 38 (1926).

In compliance with the statute, this Court has adopted for the Jones Act not only the FELA statutory provisions but the entire FELA judicially developed doctrine of liability.[7] For example, this Court in Jones Act cases has applied the statute of limitations from § 6 of the FELA (45 U.S.C. § 56) rather than from California law, *Engel v. Davenport*, 271 U.S. 33 (1926); utilized the FELA statutory abolishment of the fellow servant rule and accompanying FELA case

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[6]The Jones Act states in unequivocal terms:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of a trial by jury, and *in such actions all statutes in the United States modifying or extending the common law right or remedy in cases of personal injury to railroad employees shall apply* . . ." (Emphasis added). 46 U.S.C. § 688.

See Panama R.R. Co. v. Johnson, 264 U.S. 375 (1924) (upholding the constitutionality of the Jones Act incorporation of the FELA).

[7]In *Kernan v. American Dredging Co.*, 355 U.S. 426 (1958), a case permitting recovery for the death of a seaman resulting from the violation of a statutory duty, this Court held:

> "We find no difficulty applying these principles, developed under the FELA to the present action under the Jones Act, for the latter Act expressly provides for seamen the cause of action — and consequently the entire judicially developed doctrine of liability — granted to railroad workers by the FELA. The deceased seaman here was in a position perfectly analogous to that of the railroad workers allowed recovery in the line of cases we have discussed, and the principles governing those cases clearly should apply here." *Id.* at 439.

law while extending the term "seaman" to stevedores, *International Stevedore Co. v. Haverty*, 272 U.S. 50 (1926); utilized § 1 of the FELA (45 U.S.C. § 51) and FELA case law to determine that an administrator is not entitled to maintain an action where a seaman dies leaving no survivors designated as beneficiaries, *Lindgren v. United States*, 281 U.S. 38 (1930); defined negligence utilizing FELA case law, *Jamison v. Encarnacion*, 281 U.S. 635 (1930); interpreted §§ 1 and 2 of the FELA (45 U.S.C. §§ 51 and 52) holding that a mother's claim for pecuniary loss caused by her son's death does not abate upon her death, *Van Beek v. Sabine Towing Co.*, 300 U.S. 342 (1936); determined a course of employment issue utilizing FELA case law, *O'Donnell v. Great Lakes Dredge & Dock Co.*, 318 U.S. 36, 38-39 (1943); applied *res ipsa loquitur* as utilized under the FELA, *Johnson v. United States*, 333 U.S. 46 (1948); utilized § 7 of the FELA (45 U.S.C. § 57) to hold that a Jones Act action survives the action of a tortfeasor, *Cox v. Roth*, 348 U.S. 207, 208-209 (1955); followed an FELA test to determine sufficiency of evidence on the issue of negligence, *Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521 (1957); and determined an agency issue by interpreting § 1 of FELA (45 U.S.C. § 51) and FELA case law, *Hopson v. Texaco*, 383 U.S. 262 (1966).

The California court ignored these numerous decisions and the express language of the Jones Act by holding that decisions under the Federal Employers' Liability Act are not controlling in Jones Act cases. *Baptiste v. Superior Court, supra* at 104 (Appendix A at p. 19). This blatant rejection by the California court of long standing federal law creates unnecessary controversy as to whether this Court's previous holdings are still law. California's rejection of federal law must be reversed.

B. Since Punitive Damages Are Not Recoverable Under the Federal Employers' Liability Act, They Are Not Recoverable Under the Jones Act.

The Sixth Circuit, in *Kozar v. Chesapeake & Ohio Ry. Co.*, 449 F.2d 1238 (6th Cir. 1971), as well as the Montana Supreme Court, in *State Ex Rel. Burlington Northern, Inc. v. District Court,* 548 P.2d 1390 (Mont. 1976), held that punitive damages are not available under the Federal Employers' Liability Act as a matter of law. In *Kozar,* the Sixth Circuit squarely faced the issue of whether punitive damages were available under the Federal Employers' Liability Act. In its decision, the court not only reviewed the legislative history and purpose of the FELA, but also cited numerous decisions in which damages under the FELA have been limited to *actual pecuniary loss. Kozar, supra* at pp. 1240-1243. The Sixth Circuit quoted from *Michigan Central R.R. Co. v. Vreeland,* 227 U.S. 59 (1913) in which this Court commented:

> "It is a liability for the loss and damages sustained by relatives dependent upon the decedent. It is therefore a liability for the pecuniary damage resulting to them and for that only." *Kozar, supra* at 1243, *quoting Michigan Central, supra* at 68.

The California court's failure to follow applicable law as pronounced by the Sixth Circuit is indefensible. The decision creates a direct conflict in an area which requires uniformity of decision. By establishing this conflict, litigants are now encouraged to forum shop and as the dissenting opinion in *Baptiste* states:

> "It is reasonably foreseeable that litigants and lawyers from all over the United States (indeed the world) may rush into California courts with their maritime cases seeking 'windfall' exemplary damages, thus either sinking our already overcrowded courts into the briny deep or requiring the long suffering California

taxpayers to add more courts to act as bilge pumps to process such out of state claims in order to stay afloat. This possibility punctuates the desirability of a *uniform* maritime law and any changes in the present law should be left to federal authorities in order to insure the case load is spread throughout the various states." *Baptiste v. Superior Court*, 106 Cal.App.3d 87, 107 n.3 (1980) (Appendix A at p. 24).

IV.

The Doctrine of Unseaworthiness and the Jones Act Are Independent Theories of Liability Allowing for the Recovery of the Same Measure of Compensatory Damages.

Although an action under the Jones Act and an action based upon the doctrine of unseaworthiness were thought at one time to be separate and distinct causes of action, this Court in 1927 held that these claims were merely alternative grounds of recovery of a single cause of action. *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1926); *McAllister v. Magnolia Petroleum Co.*, 357 U.S. 221, 225 (1958); *Jordine v. Walling*, 185 F.2d 662, 670 (3rd Cir. 1950); M. Norris, *The Law of Seamen* § 678 at 336 (3rd ed. 1970). In 1928, this Court reaffirmed this principle by stating:

> "[W]hether or not the seaman's injuries were occasioned by the unseaworthiness of the vessel or by the negligence of the master or members of the crew, or both combined, there is but a *single wrongful invasion of his primary right of bodily safety and but a single legal wrong, Baltimore S.S. Co. v. Phillips, supra*, 321, for which he is entitled to but one indemnity by way of *compensatory damages*." *Pacific S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928) (Emphasis added).

Today, a Jones Act negligence action is viewed not as an alternative to unseaworthiness but rather as a cumulative remedy allowing a seaman to plead both in the same action. *Paumier v. Barge BT 1793*, 395 F.Supp. 1019, 1032 (E.D.Va. 1974); *Kelley v. Midland S.S. Line, Inc.*, 162 F.Supp. 68 (W.D.N.Y. 1956). Baptiste followed this practice in his complaint.

Since both liability theories are based upon the same operative facts construing a single cause of action, a judgment rendered upon either a Jones Act claim or an unseaworthiness claim will bar a subsequent lawsuit based upon the other theory. *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1927); *Troupe v. Chicago Duluth and Georgian Bay Transit Co.*, 234 F.2d 253, 258 (2nd Cir. 1956). The claims are not separate and independent claims under Title 28 United States Code Section 1441(c), so as to allow for removal. *Pate v. Standard Dredging Corp.*, 193 F.2d 498, 501 (5th Cir. 1952). Nor are claims for unseaworthiness entitled to a shorter period of limitations than claims under the Jones Act. *McAllister v. Magnolia Petroleum Co.*, *supra* at 224-225.

The California court ignored federal decisional law limiting a plaintiff who brings a cause of action under both unseaworthiness and the Jones Act to a single recovery for compensatory damages. *Lee v. Pacific Far East Line, Inc.*, 566 F.2d 65, 68 (9th Cir. 1977); *McCarthy v. American Eastern Corp.*, 175 F.2d 724, 727 (3rd Cir. 1949); *Jordine v. Walling, supra; German v. Carnegie-Illinois Steel Corp.*, 156 F.2d 977, 979 (3rd Cir. 1946). This single recovery is compelled, since unseaworthiness and Jones Act negligence counts are considered to "seek the same damages for

a single injury. Only the legal liability differs." *Leith v. World Transport Co.*, 321 F.2d 591, 592 (3rd Cir. 1963).[8]

Because federal decisional law is unwavering in its view that the same measure of compensatory damages must be recovered in actions based on unseaworthiness and the Jones Act, the California court's ruling allowing punitive damages must be reversed.

V.

A State Court Cannot Judicially Legislate a Federal Measure of Damages.

A. The California Court's Decision Is a Constitutionally Impermissible Intrusion Into Federal Maritime Law.

The United States Constitution mandates a national body of maritime law.[9] The admiralty clause extends the federal judicial power "to all Cases of admiralty and maritime Jurisdiction," while article I, § 8 recognizes that Congress has the paramount power to legislate in the area of maritime law. U.S. CONST., art. III, § 2; art. I, § 8. Utilizing that power, Congress has deliberately and consistently legislated in such areas as maritime employment and personal injury compensation. *E.g.* 46 U.S.C. §§ 563-568. Interpreting and supplementing such legislation, federal courts have enun-

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[8]The California court recognized the two theories to in reality be only one. In referring to them as "Siamese twins," it acknowledged there could be only one measure of recovery. *Baptiste v. Superior Court*, 106 Cal.App.3d 87, 99 (1980).

[9]By virtue of the United States Constitution and the "saving to suitors" clause of the Judiciary Act, state courts have concurrent jurisdiction with federal courts to entertain and try actions pled pursuant to the Jones Act and under general maritime law. U.S. CONST., art. III § 2; 28 U.S.C. § 1333. Because of the multiplicity of conceivable judicial forums, this Court since 1874 has consistently recognized the need to preserve uniformity so that the remedies and rights of the parties will remain consistent regardless of the tribunal. *The Lottawana*, 88 U.S. (21 Wall.) 558, 595 (1874). Consequently, United States maritime law is by necessity a national body of law requiring uniform application. *Id.*

ciated a body of national maritime law. Totally ignoring this constitutional design, the California court's decision expands and alters federal law to allow the recovery of punitive damages under the Jones Act (46 U.S.C. § 688, *et seq.*) and the federal maritime doctrine of unseaworthiness. This attempt to judicially legislate federal maritime law cannot withstand constitutional scrutiny and must be reversed.

In early landmark decisions, this Court enunciated what has become known as the *Jensen* Doctrine. *Southern Pacific v. Jensen*, 244 U.S. 205 (1917); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149 (1920). As first proclaimed, this doctrine prohibits a state from modifying, expanding or interfering with any law governing maritime matters.[10] Al-

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[10]In an earlier decision, this Court stated:

> "As the plain result of these recent opinions and the earlier cases upon which they are based, we accept the following doctrine: The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law and empowered Congress to legislate in respect of them and other matters within the admiralty and maritime jurisdiction. *Moreover, it took from the States all power, by legislation or judicial decision, to contravene the essential purposes of, or to work material injury to, characteristic features of such law or to interfere with its proper harmony and uniformity in its international and interstate relations.* To preserve adequate harmony and appropriate uniform rules relating to maritime matters and bring them within control of the Federal Government was the fundamental purpose; and to such definite end Congress was empowered to legislate within that sphere.
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> "Since the beginning, *Federal courts have recognized and applied the rules and principles of maritime law as something distinct from laws of the several States — not derived from or dependent on their will.* The foundation of the right to do this, the purposes for which it was granted, and the nature of the system so administered, were distinctly pointed out long ago. 'That we have a maritime law of our own, operative throughout the United States, cannot be doubted. . . . One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. *It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed* on

though this Court has lessened this once intractable rule by allowing states to provide in limited areas for application of state law, the *Jensen* Doctrine is still viable in "suits relating to the relationship of vessels, plying the high seas and our navigable waters and to their crews." *Askew v. American Waterways Operations, Inc.*, 411 U.S. 325, 344 (1973).[11] Consequently, whenever states have attempted to modify, alter or expand maritime law in the context of seaman's litigation, this Court has struck down such encroachments.

This Court has consistently refused to allow modification of federal maritime law by state action. For example this Court disallowed the use of the Pennsylvania burden of proof rule in Jones Act cases. *Garrett v. Moore-McCormack Co.*, 317 U.S. 239 (1942). Similarly, this Court held that neither California nor Florida could apply state laws regarding statute of limitations in Jones Act cases. *Engel v. Davenport*, 271 U.S. 33 (1926); *Cox v. Roth*, 348 U.S. 207 (1954). In another case, this Court faced the sole issue of whether a Louisiana direct action statute violated "the Jones Act, the Limited Liability Act, and a Constitutional grant to the Federal government of exclusive jurisdiction in maritime matters." Answering the issue in the affirmative, this Court held the Louisiana statute could not be applied in a seaman's case. *Maryland Casualty v. Cushing*, 347 U.S. 409, 412 (1954).

To prevent modification of maritime law, this Court held prior to the enactment of the Jones Act:

> "Under the doctrine approved in *Southern Pacific Co. v. Jensen*, no State has power to abolish the well

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all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.' *The Lottawanna*, 21 Wall. 558, 574, 575." *Knickerbocker Ice Co. v. Stewart, supra* at 160-161 (emphasis added).

[11]In *Askew v. American Waterways Operators, Inc.*, 411 U.S. 325 (1975), this Court allowed to stand a Florida statute which was designed to protect the coastline of Florida from pollution.

> recognized maritime rule concerning measure of recovery and substitute thereof the full indemnity rule of the common law. Such a substitution would distinctly and definitely change or add to the settled maritime law; and it would be destructive of the 'uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.' " (Emphasis added). *Chelentis v. Luckenback S.S. Co. Inc.*, 247 U.S. 372, 382 (1918).

Two years after this Court's decision in *Chelentis*, Congress enacted the Jones Act granting seamen the right to recover compensatory damages under a negligence standard. Yet the holding of *Chelentis*, that a state does not have the power to change the measure of damages recoverable in a maritime case, is still valid. Since the measure of damages in Jones Act cases is limited to compensatory damages, *Pacific S.S. Co. v. Peterson*, 278 U.S. 130, 138 (1928); *see Panama R.R. Co. v. Johnson*, 264 U.S. 375, 391 (1924), a state court does not have the power to change this measure of damages to include punitive damages.

B. The California Court's Decision Is an Inappropriate Expansion of a Federal Statute.

Where a federal statute such as the Jones Act does not expressly provide for the recovery of punitive damages, a court and particularly a state court, should not judicially legislate such. The Ninth Circuit recently followed that principle upholding the constitutionality of California's wrongful death statute which precludes punitive damages. *Paris Air Crash v. Plaintiffs in MDL 172*, 622 F.2d 1315 (9th Cir. 1980). In so holding, the Ninth Circuit rationalized its decision with two points of compelling interest.

First, by recognizing that the legislature should be given broad discretion, the Ninth Circuit refused to substitute its judgment for that of the legislature. In contrast to the Ninth Circuit's deference to the California legislature, the California Court of Appeal has judicially restructured maritime damages by allowing punitive damages. The clearest analysis of the refusal to interfere with legislative prerogatives was provided by the Fourth Circuit Court of Appeals when it said:

> "Where Congress has intended that damages in excess of actual damage sustained by plaintiff may be recovered in action created by statute, it has found no difficulty in using language appropriate to that end. Thus, in copyright cases, 17 U.S.C.A. § 1, in patent cases, 35 U.S.C.A. § 284, and in anti-trust cases, 15 U.S.C.A. § 15, the right to recover treble damages is expressly given." *United Mine Workers v. Patlin*, 211 F.2d 742, 744 (1954).

The decision in *Paris Air Crash* also demonstrates the tendency of federal courts to apply a "restraining" hand rather than a "liberal" one when faced with a punitive damage issue. *Paris Air Crash v. Plaintiffs* in MDL 172, 622 F.2d 1315, 1318 (9th Cir. 1980). Such restraint is needed because of the serious and often unpredictable effects of allowing punitive damage actions. *Id.* at 1320. The Ninth Circuit emphasized that:

> "Judicial restructuring of a matter as complex as the incidence and effects of punitive damages would be especially prone to unforeseeable error." *Id.* at 1319 n.5.

The California court using its "liberal hand" and without consideration of the United States Congress severely altered federal maritime law. Judicial tinkering on the state level with a federal statute which directly affects the workings

of an industry that operates in many states and abroad is grossly unwarranted and unwise.

Recently, this Court restrained from providing for punitive damages in an action under the Railway Labor Act. *Int'l Bhd. Elec. Workers v. Foust*, 442 U.S. 42, 52 (1979). Just as the fundamental purpose of unfair representation suits is to compensate for injuries caused by violations of employees' rights, *Id.* at 48-49, the fundamental purpose of the Jones Act is to compensate seamen injured in the course of their employment for their pecuniary loss. Such a compensatory purpose will not be served by applying punitive damages.

To allow a punitive damage claim, in a seaman's action, will play havoc with federal maritime law and destroy necessary uniformity. A California court should not and constitutionally cannot presume punitive damage law should be engrafted upon federal maritime law forcing its social views upon its sister states,[12] the federal court and the United

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[12]Although most states allow the recovery of punitive damages, there is no nationwide consistency as to whether they should be imposed, when they should be imposed and the type of conduct required to support an award. Several states refuse to award them. In those states allowing punitive damages, the conduct required to support them ranges from "oppression, fraud, or malice" on the one extreme to "rudeness" or mere "caprice" on the other. Long, *Punitive Damages: An Unsettled Doctrine*, 25 DRAKE L.REV. 870, 881 (1976). Not only does the range of conduct vary from state to state, the rationale used to justify the awards differ. Some view them as damages to punish and deter while others view them as purely compensatory in nature. *Id.* at 875-876; Note, *Exemplary Damages in the Law of Torts*, 70 HARV. L.REV. 517, 520-522 (1957). Still others view them as vindictive in nature to be awarded only for revenge. Long, *supra* at 877.

Several states specifically forbid imposing punitive damages in civil cases. Nebraska and New Hampshire award only compensatory damages in civil cases. Similarly, Louisiana and Washington prohibit punitive damage awards absent statutory authorization. This lack of support for punitive damages is exemplified by the following detailed discussion of Nebraska, New Hampshire, Louisiana and Washington law.

(1) In Nebraska, the measure of recovery in all civil cases is compensation for the injury sustained and punitive, vindictive, or exemplary

States Congress. California's decision is an unconstitutional expansion of federal maritime law and must be reversed.

CONCLUSION.

Without review by this Court, the California court's decision will be permitted to stand as published precedent for seamen in all federal and state courts to seek and perhaps recover a measure of damages not authorized by Congress and specifically not permitted by federal law. Like the trial judge in this case, who first ruled punitive damages were not recoverable, the California court in its majority and in its dissent pointed to the necessity of review by this Court:

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damages are not allowed. *Prather v. Eisenmann*, 200 Neb. 1, 261 N.W.2d 766, 772 (1978); *Miller v. Kingsley*, 194 Neb. 123, 230 N.W.2d 472, 474 (1975); *Abel v. Conover*, 170 Neb. 926, 104 N.W.2d 684, 688 (1960).

(2) In New Hampshire, the punitive nature of exemplary damages has been colorfully rejected. "The idea is wrong. It is a monstrous heresy. It is an unsightly and unhealthy excrescence deforming the symmetry of the body of law." *Fay v. Parker*, 53 N.H. 342, 382 (1872). Although no damages other than compensatory damages will be awarded in New Hampshire, *Munson v. Raudonis*, 387 A.2d 1174, 1177 (N.H. 1978); *Vratsenes v. N.H. Auto. Inc.*, 289 A.2d 66, 68 (N.H. 1972), compensatory damages may reflect any aggravating circumstances where the act involved is wanton, malicious or oppressive. *Id.* However, compensatory damages in New Hampshire will be increased only to compensate for the distress caused to the plaintiff by the defendant's conduct and will reflect the resulting actual material loss. *Id.* at 67.

(3) It is well settled in Louisiana that punitive damages will not be allowed unless authorized by statute. *McCoy v. Arkansas Natural Gas Co.*, 175 La. 487, 143 So. 383 (1932).

(4) The Washington Supreme Court has declared that the doctrine of punitive damages is unsound in principle and such damages will not be recovered absent statutory authorization. *Steele v. Johnson*, 458 P.2d 889, 890 (Wash. 1969); *Maki v. Aluminum Building Products*, 436 P.2d 186, 187 (Wash. 1968). In limited circumstances punitive damages can be awarded but only with express statutory authority. For instance, Washington statutes provide that treble damages will be awarded for waste to real property. *Dorsey v. Steelman*, 1 Wash.App. 85, 459 P.2d 416 (1969) and the measure of damages for a timber trespass is treble the "stumpage value" at the time of the trespass. *Ventoza v. Anderson*, 14 Wash.App. 882, 545 P.2d 1219, 1226 (1976).

> "[W]e have been cited to no authority and we have found none, which declares this to be the current state of the law; there is no United States Supreme Court decision which can be said to constitute a holding on this point." *Baptiste v. Superior Court,* 106 Cal.App.3d 87, 100 (1980) (Majority Opinion) (Appendix A at p. 14).
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> "The majority opinion concedes that recent case law reflects an overwhelming reluctance on the part of the courts sitting in admiralty to award punitive damages and then flatly concludes that since no federal law precludes the plaintiff from presenting the issue of punitive damages to a jury, it is proper for a state court to authorize such damages by decisional law." *Id.* at 106 (Dissenting Opinion) (Appendix A at p. 22).

Unless reviewed by this Court, the California decision will stand in stark contrast to long established federal law and as a bold intrusion upon the judgment of this Court and the powers of the Congress of the United States. For these reasons, a writ of certiorari should issue forthwith.

Respectfully submitted,

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APPENDIX "A".

Opinion.

[Civ. No. 58176. Second Dist., Div. One, May 23, 1980.]

Gilbert A. Baptiste, Petitioner, v. The Superior Court of Los Angeles County, Respondent; Chevron Shipping Company, Real Party in Interest.

SUMMARY

In a maritime tort action by a seaman against his corporate employer, the trial court granted defendant's motion to strike allegations added by amendment to the complaint setting forth plaintiff's entitlement to punitive damages. The court granted the motion on the ground that punitive damages were not recoverable in an action pleaded pursuant to the Jones Act, 46 U.S.C. § 688, and the doctrine of unseaworthiness. The amended complaint alleged that defendant made an informed and calculated decision to practice economy in providing its seamen with the safe environment required by the federal law of admiralty and the doctrine of unseaworthiness. The amended complaint further alleged that defendant's decision involved acceptance of the risk that certain seamen might be exposed to substantial injury from high-level noises during the course of their employment, and that plaintiff suffered a hearing loss due to such high-level noises while employed for defendant.

The Court of Appeal issued a peremptory writ of mandate directing the trial court to vacate its order insofar as that order struck plaintiff's allegations concerning punitive damages, and to reinstate those allegations and the prayer as contained in plaintiff's first amended complaint. The court held that state courts have concurrent jurisdiction with fedeal courts to entertain and to try actions pleaded pursuant to the

Jones Act and the general maritime law. The court also held that federal maritime law does not preclude the imposition of punitive damages as a matter of law. The court further held that precedents under the Federal Employers' Liability Act, 45 U.S.C. §§ 51-60, do not constitute a bar to punitive damages in Jones Act cases. Thus, the court held that plaintiff had alleged a good and valid cause of action for punitive damages.

(Opinion by Jefferson (Bernard), P. J., with Marshall, J.,* concurring. Separate dissenting opinion by Hanson, J.)

COUNSEL

Silver & McWilliams, Lawrence R. Booth, Donna Silver and Leonard Sacks for Petitioner.

No appearance for Respondent.

Lawler, Felix & Hall, Thomas E. Workman, Jr., Jane H. Barrett and Mary J. Bush for Real Party in Interest.

OPINION

JEFFERSON (Bernard), P.J.—This petition for mandate compels resolution of the question of whether Gilbert A. Baptiste, the petitioner (hereinafter plaintiff), who is prosecuting in the superior court a maritime tort action against his corporate employer, Chevron Shipping Company (Standard Oil Company of California), real party in interest before us (hereinafter defendant), may there seek an award of punitive damages in addition to other relief. As we shall articulate, we have determined that petitioner may do so.

I.

The Procedural Facts

Plaintiff filed a personal injury complaint in the superior court on December 4, 1974, in which he sought damages from defendant pursuant to the Jones Act[1] and general mar-

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*Assigned by the Chairperson of the Judicial Council.

[1]46 United States Code section 688, added by the Merchant Marine Act of 1920, section 33, but commonly referred to as the Jones Act. The pertinent section will be set forth in full, *infra*.

itime law. He alleged that he had been employed by defendant from 1966 to 1974 as a seaman on various vessels owned and operated by defendant in navigable waters, and had sustained injuries due to defendant's negligence and failure to provide and maintain the seaworthiness of the vessels upon which plaintiff had worked.

In a second cause of action, plaintiff alleged that he was entitled to damages for maintenance and cure, and that defendant had "failed and refused to furnish plaintiff, with the same." Plaintiff sought general damages of $200,000, maintenance and cure damages of $5,000, and damages according to proof for medical expenses, loss of earnings, costs of suit, and "[f]or such other and further relief as the Court deems proper."

Defendant's answer, denying liability, was filed February 12, 1975; thereafter discovery was pursued. In 1979, plaintiff received some documents from defendant which caused plaintiff to reevaluate his case.

On August 14, 1979, plaintiff moved to amend his complaint to include allegations concerning his entitlement to punitive damages; the proposed amendment sought $200 million in punitive damages and $1 million in general damages. Accompanying the motion were certain copies of documents received from defendant and the affidavit of plaintiff's counsel which revealed that in 1970 defendant was informed and made aware of the fact that there were impermissibly high noise levels in the engine rooms of two of defendant's ships, described as "five to 10 times [a man's] suggested allowable daily exposure limit" and that "[c]ontinued unprotected exposure at these levels will result in a gradual but permanent loss of hearing." In 1971, a similar problem was detected on a third vessel. The recommendation to defendant was that "[i]mmediate steps should be taken to reduce noise exposures. Personal hearing

protection should be provided and its use required until noise reduction is achieved."

In 1972, it had been determined that the impermissibly high noise levels that permeated the engine rooms resulted from gears in the engine rooms of the affected vessels; certain financial projections were made with respect to the alternatives available to reduce the noise; the cost of reduction ranged from $800 per vessel to $6,500 per vessel, the latter estimate constituting the cost of gear replacement. It was pointed out, however, that "the cheapest solution . . . is to provide and enforce use of earphones while in the engine room." Shortly thereafter the alternatives were again listed, and ear plugs for the seamen were recommended due to the "short remaining life" of the vessels involved. On October 31, 1972, a directive was issued to the masters of defendant's ships requiring that warning signs be posted in the engine rooms and that ear plugs or muffs be worn by all personnel while on duty there.

According to the declaration of plaintiff's counsel, plaintiff had served on ships in the same fleet as those tested, of the same vintage—in service since World War II. Plaintiff, and other seamen, had not only worked in the engine rooms of these vessels but had lived in close proximity to them while not on duty. Plaintiff had discovered in 1974 that he was becoming deaf, and had instituted this action, but, until 1979, was unaware of defendant's specific knowledge of the dangerous condition in the engine rooms and the actions taken as the result of that knowledge.

The amended complaint alleged that defendant had "willfully, wantonly, intentionally and with reckless disregard for the safety of the plaintiff and other seamen employed by said defendant, permitted extremely high noise levels to exist in the environment in which the plaintiff and other seamen were required to work, with full knowledge

that such noise would cause permanent hearing loss to said plaintiff and others."

On August 30, 1979, the trial court granted plaintiff's motion to amend the complaint. Defendant then filed a motion to strike the amended allegations which set forth plaintiff's entitlement to punitive damages, on the ground that, "as a matter of law punitive damages are not recoverable in an action pled pursuant to the Jones Act and doctrine of unseaworthiness."

On November 5, 1979, the trial court granted defendant's motion to strike, declaring that "[i]n this regard the Court notes the following: (a) federal law is applicable; (b) there is no authority for punitive damages in a maritime case, though there is some dicta to that effect; (c) in the absence of maritime law on this subject, FELA cases are the most persuasive available authority; (d) punitive damages are not allowable in FELA cases; (e) extensions of substantive law, regardless of their desirability, are better left to the appellate courts—the judicial system functions more effectively if litigants can, at the trial court level, rely on what appears to be the existing status of the law."

Plaintiff then sought a writ of mandate in the appellate court, seeking to have vacated the order granting the motion to strike and to have reinstated the punitive damages allegations. The writ was denied. Plaintiff then sought a hearing before the California Supreme Court; on February 20, 1980, the high court granted plaintiff's petition for a hearing and ordered the matter transferred to this court, with directions for us to issue an alternative writ and place the matter on calendar. This was done on March 3, 1980. We now consider the matter on the merits.

II.

Jurisdiction to Entertain Jones Act and General Maritime Law Actions

State courts have concurrent jurisdiction with federal courts to entertain and try actions pleaded pursuant to the Jones Act and the general maritime law. Federal jurisdiction is derived from article III, section 2 of the United States Constitution, which confers that jurisdiction on "United States Courts" over "all cases of admiralty and maritime jurisdiction."

Section 1333 of title 28 of the United States Code provides for *exclusive* federal jurisdiction in admiralty cases with the exception of "saving to suitors in all cases all other remedies to which they are otherwise entitled." The exception allows such litigants as plaintiff to pursue recovery in a state court. (See *Engel v. Davenport* (1926) 271 U.S. 33 [70 L.Ed. 813, 46 S.Ct. 410].)

The prevailing rule is that, regardless of the forum, federal substantive law applies. Numerous United States Supreme Court cases have discussed this principle—e.g., *Engel, supra; Garrett v. Moore-McCormack Co.* (1942) 317 U.S. 239 [87 L.Ed. 239, 63 S.Ct. 246]; *Pope & Talbot, Inc. v. Hawn* (1953) 346 U.S. 406 [98 L.Ed. 143, 74 S.Ct. 202]; *Kermarec v. Compagnie Generale* (1959) 358 U.S. 625 [3 L.Ed.2d 550, 79 S.Ct. 406]. The rationale is the perceived need for uniformity in maritime tort law, regardless of the place of injury or forum of trial. In addition, it has been of historical importance to fashion and apply federal law liberally with protection of the rights of injured seamen as the goal; as a consequence, some obstacles traditionally posed by state law have been avoided.

The California courts have recognized that, in the area of maritime torts, their task has been that of ascertaining

and applying appropriate legal principles derived from the considerable body of federal maritime law that has developed in the United States. (See, e.g., *Dixon v. Grace Lines, Inc.* (1972) 27 Cal.App.3d 278 [103 Cal.Rptr. 595]; *Catania v. Halcyon Steamship Co.* (1975) 44 Cal.App.3d 348 [118 Cal.Rptr. 513].) As with any body of law, conflicts and confusing signals may exist within it; it remains the task of the reviewing court to explicate and determine the issues presented. (See, e.g., *Prohoroff v. Kawasaki Kisen Kaisha, Ltd.* (1979) 90 Cal.App.3d 640, 644-645 [153 Cal.Rptr. 287].)

III.

The Concept of Punitive Damages in General

There is substantial controversy in all American jurisdictions concerning the imposition of punitive damages. As Prosser explains, "[s]omething more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as spite or 'malice' or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that his conduct may be called wilful or wanton." (Prosser on Torts (4th ed. 1971) § 2, pp. 9-10; see also, Stein, Damages and Recovery, Personal Injury and Death Actions (1st ed. 1972), ch. 12, p. 347 et seq.)

Punitive damages have been condemned as undue compensation of the plaintiff beyond his just deserts and defended as a salutary method of discouraging evil motives. The major modern rationale supporting their imposition is that of placing value on their "deterrent" quality. It has been urged that the "windfall" to an individual plaintiff can be avoided by the adoption of some system of diversion

of punitive-damage awards from the plaintiff into a public fund, thereby removing the personal gain involved while retaining a traditional method of punishing a wrongdoer who will, because of such punishment, modify his future conduct accordingly.

The present debate invariably involves the question of to what extent, if any, punitive-damage awards should be imposed on corporate enterprises, whose activities may have a deleterious effect—not on just one individual—but on many. It has been argued—unsuccessfully so far—that punitive damages should be abandoned against such corporate activity because, in fact, they constitute no deterrent to corporate misconduct, but, rather, penalize the shareholders of corporations who have not participated in any wrongdoing and have no method of curtailing misconduct on the part of corporate agents. (See, *Punitive Damages Under FELA*, (1971) 71 Colum.L.Rev. 1113, 1115.)

It seems abundantly clear, however, that punitive damages "are an established part of our legal system, and there is no indication of any desire or tendency to abandon them." (Prosser, *supra*, § 2, p. 11.)

IV.

Punitive Damages as a Part of Federal Common Law

We note that punitive damages have long been regarded as an integral part of federal common law. Thus, in the early case of *Lake Shore &c. Railway Co. v. Prentice* (1893) 147 U.S. 101 [37 L.Ed. 97, 13 S.Ct. 261], the United States Supreme Court was reviewing such an award imposed upon a corporate railway because one of its conductors had inexplicably subjected the plaintiff passenger to verbal abuse and harassment during a journey on one of the corporation's trains. The *Prentice* court declared that "[i]n this court, the

doctrine is well settled, that in actions of tort the jury, in addition to the sum awarded by way of compensation for the plaintiff's injury, may award exemplary, punitive or vindictive damages, . . ." (*Id.* at p. 107 [37 L.Ed. at p. 101].) However, the *Prentice* court also held that while a corporation, like an individual, may be held liable for such damages, it could only be held to the extent that it authorized or ratified the evil conduct of its agent. In that case, no such authorization or ratification existed, and, thus, no punitive damages could be imposed; but the court's acceptance of the principles of a punitive-damage award remains intact.

There is considerable distance between "smart money," given for temporary discomfort and inconvenience, no matter how galling, to an individual plaintiff, and a punitive-damage award imposed to ensure a change in corporate policy. Insofar as we have been able to discover, the United States Supreme Court has not wavered on the concept of the punitive-damage award as a viable principle of federal common law.

V.

The Viability of Punitive Damages in Federal Maritime Actions

An overall view of federal maritime law warrants the conclusion that, while numerous courts have expounded on the availability of punitive damages in a proper case, few have approved their imposition in the actual cases before the courts. (See, for example, the analysis of this situation presented in *Punitive Damages in Admiralty* (1967) 18 Hastings L.J. 995.) We have found no federal case flatly precluding a punitive-damage award in admiralty *as a matter of law;* much of the admiralty case law, as in *Prentice, supra,* 147 U.S. 101, rests denial of a particular punitive-

damage award on the absence of some factual element in the case under consideration.

Punitive damages were discussed in admiralty as early as 1818. In *The Amiable Nancy* (1818) 16 U.S. (3 Wheat.) 546 [4 L.Ed. 456], where a marine trespass had been committed, the court alluded to the possibility—indeed the desirability—of punishing the wrongdoers with a monetary award to the plaintiff; unfortunately, however, the particular wrongdoers at which the court was incensed were not before the court. Damages of a punitive nature were awarded in 1859, in *Gallagher v. The Yankee* (C.C.N.D. Cal.) 9 Fed.Cas. 1091 (No. 5196), affd. 30 Fed.Cas. 781 (No. 18124); in that matter, the plaintiff had been taken involuntarily to the Sandwich Islands, and the court detected a positive element of conscious wrongdoing.

Ever since *Gallagher*, however, the decisional law reflects an overwhelming reluctance on the part of courts sitting in admiralty to award punitive damages although discussion of such an award has never been predicated on the ground that it cannot be done, but rather is contra indicated in the case before it. An example of the typical discussion of the issue may be found in *In re Marine Sulphur Queen* (2d Cir. 1972) 460 F.2d 89, 105, wherein it was said: "A condition precedent to awarding [punitive damages] is a showing by the plaintiffs that the defendant was guilty of gross negligence, or actual malice or criminal indifference which is the equivalent of reckless and wanton misconduct. There is no evidence in this case to support a finding of any of these elements. [Citation.] Even if there were some evidence of this sort, the award of punitive damages is discretionary with the trial court."

In *Gunnip v. Warner Co.* (E.D.Pa. 1968) 43 F.R.D. 365, 368, the issue surfaced in a case concerned with federal procedure. Plaintiff attempted to amend his complaint,

brought pursuant to the Jones Act, to include punitive damages; the court held that he could do so.

There are some fairly recent cases which indicate that, at least in some well-defined areas, federal courts, sitting in admiralty, are overcoming their reluctance to impose punitive damages on a defendant in an appropriate case; these decisions will be discussed, *infra*.

A. *Nature of Causes of Action Available to an Injured Seaman*

In order to clarify the arguments advanced by the parties herein, we very briefly review the nature of the causes of action available to an injured seaman, or, in the case of his death, to his personal representative; our review is general rather than exhaustive.[2]

First. The most basic remedy afforded an injured seaman is that of damages for items given the name—maintenance and cure; the objective is primarily the same as that of land-based worker's compensation laws. The plaintiff seaman is almost always entitled to food, lodging and medical care to be provided by his employer when the former is injured or becomes ill during the course of his employment; the entitlement lasts until some type of stability has attached to his condition. However, the maintenance and cure remedy differs markedly from land-based worker's compensation in that it is not the seaman's *exclusive* remedy when he is injured during the course of his employment.

Second. The seaman may also sue his employer for damages for personal injury.

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[2]For such discussion and much helpful case analysis, see Gilmore & Black, The Law of Admiralty (2d ed. 1975) chapter VI.

After 1920, when the Jones Act was enacted into law[3] it was extensively utilized by seamen to pursue negligence actions against their employers, as the act provided for trial by jury and also afforded a remedy not available under general maritime law—for wrongful death. While the usual basic elements of negligence, duty, breach and proximate causation, are involved in these actions, it is not inaccurate to characterize them as subject to extremely liberal interpretations by the courts, interpretations that have favored the seaman-litigant.

The references in the Jones Act to "all statutes of the United States" applicable to "railway employees" are to the Federal Employers' Liability Acts (45 U.S.C. §§ 51-60), commonly known as FELA, and which govern the recovery available for personal injury and death to railroad workers. It has long been held that Congress intended seamen and their land-based counterparts—railroad workers —to be treated in as uniform a fashion as possible. Judicial interpretations of FELA are regarded as persuasive authority in Jones Act litigation. (*Kernan v. American Dredging Co.* (1958) 355 U.S. 426 [2 L.Ed.2d 382, 78 S.Ct. 394]; *Cox v. Dravo Corp.* (3d Cir. 1975) 517 F.2d 620, 622.)

Third. The third avenue to recovery for an injured seaman results from acceptance of the principle that it has long

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[3]The Jones Act provides: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

been a shipowner's duty to provide his seaman with safe surroundings during his employment—a seaworthy vessel. This duty is not based on statute but has developed over centuries through decisional admiralty law. In recent times it has been expanded to the point where it is now considered a form of absolute liability. Writers such as Gilmore and Black (see fn. 2) identify the case of *Mahnich v. Southern S. S. Co.* (1944) 321 U.S. 96 [88 L.Ed. 561, 64 S.Ct. 455], as the beginning of what may be identified as an explosion of the *unseaworthy* cause of action. In *Mahnich,* the United States Supreme Court determined that "operational negligence" that involved a vessel could be classified as "unseaworthiness." This cause of action now outranks Jones Act actions as the most used remedy for the injured seaman.

Some early case law held that an injured seaman-plaintiff must elect between a cause of action pursuant to the Jones Act and a general maritime action based on the unseaworthiness doctrine. But this early case law no longer prevails. It is common and acceptable practice for a plaintiff to plead both the Jones Act and the unseaworthiness doctrine and place both causes of action before the jury, although there is but one recovery. Since *Mahnich,* the distinctions between the two remedies have been largely obliterated, and, "[a]fter ten or fifteen years of confusion the admiralty lawyers and the admiralty judges came to understand that the Jones Act court and the unseaworthiness count are Siamese twins." (Gilmore & Black, *supra,* p. 383).

These, then, are the ordinarily utilized causes of action available to an injured seaman, and plaintiff, in the case at bench, pleads them all.

B. *Does Federal Maritime Law Preclude the Imposition of Punitive Damages as a Matter of Law?*

Defendant contends here that federal maritime law precludes the imposition of punitive damages as a matter of law. For this assertion, defendant relies on the reality that few cases in admiralty have afforded such relief. However, as we have pointed out previously herein, we have been cited to no authority, and we have found none, which declares this to be the current state of the law; there is no United States Supreme Court decision which can be said to constitute a holding to this effect.

What has actually happened when punitive damages have been sought in an admiralty case is illustrated by the history of the case of *Petition of Den Norske Amerikalinje A/S* (N.D. Ohio 1967) 276 F.Supp. 163. There the litigation arose from a collision of vessels. The district court judge, in a lengthy opinion, declared that "[t]he fact that punitive damages have never been visited upon a tortfeasor in an admiralty proceeding is no reason for precluding such a recovery. . . . Exemplary damages are the product of the common law and are not a creature of legislation. Thus, while certain statutes may specifically authorize the recovery of punitive damages, such specific reference is neither common nor necessary." (*Den Norske, supra,* 276 F.Supp. 163, 174-176.)

The *Den Norske* court relied upon *Vaughan v. Atkinson* (1962) 369 U.S. 527 [8 L.Ed.2d 88, 82 S.Ct. 997], in which a majority of the United States Supreme Court affirmed an award of attorney's fees to the seaman-litigant wrongfully denied maintenance and cure by his employer; it was said that the award was actually compensatory, and was to be given only in situations where oppressive or unjustifiable

conduct had occurred. Justice Stewart, in a separate opinion, indicated that the award was actually one of punitive damages and, in the appropriate case, there was nothing wrong with making such an award.[4] The trial court awarded $70,000 in punitive damages in *Den Norske*.

In *United States Steel Corp. v. Fuhrman* (6th Cir. 1969) 407 F.2d 1143 — the appeal from the Den Norske decision — the Sixth Circuit reversed the award of punitive damages but placed the reversal on the ground that the evidence adduced below had *not* established corporate liability for the misconduct which was the subject of the seaman's complaint. The *Fuhrman* court observed: "We think the better rule is that punitive damages are not recoverable against the owner of a vessel for the act of the master *unless* it can be shown that the owner *authorized or ratified* the acts of the master either before or after the accident. *Punitive damages also may be recoverable* if the acts complained of were those of an unfit master and the owner was reckless in employing him." (*Fuhrman, supra,* 407 F.2d 1143, 1148.) (Italics added.)

Our analysis of *Fuhrman* leads inexorably to the conclusion that, once again, a maritime court was acknowledging the principle of law of the acceptability and viability of a punitive-damage award in maritime law, while finding against the award on the facts before it. In addition, the *Fuhrman* court was wrestling with what has been identified as one of the basic dilemmas inherent in the punitive damage area, i.e., the extent of corporate liability for the oppressive conduct of an agent. (See Prosser, *supra,* § 2, p. 12.)

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[4]It was held in *Kraljic v. Berman Enterprises, Inc.* (2d Cir. 1978) 575 F.2d 412, that the *Vaughan* ruling by the majority did *not* indicate approval of the imposition of punitive damages on occasion but was strictly limited to its facts; thus, a seaman wrongfully deprived of maintenance and cure was limited to recovery of attorney fees only.

In 1973, employing *Vaughan v. Atkinson, supra,* 369 U.S. 527, as the authoritative precedent, the First Circuit upheld a punitive-damage award imposed upon an employer who had failed, with no apparent justification, to provide seaman Robinson with maintenance and cure. (*Robinson v. Pocahontas, Inc.* (1st Cir. 1973) 477 F.2d 1048.)[5] Declaring that the evidence had shown sufficiently reprehensible conduct on the part of the defendant, the punitive-damage award was upheld; it is significant that the award was *not* limited to recovery of attorney fees.

Two years later, in *Renner v. Rockwell International Corporation* (C.D.Cal. 1975) 403 F.Supp. 849, 852, the district court judge declared (in a pleading case) that punitive damages would be potentially recoverable by the plaintiffs in the trial of a wrongful death action. The trial judge relied on two United States Supreme Court cases which demonstrate rather emphatically the continuing emphasis placed by that court in the area of maritime tort law on a liberal and protective application of rules of law that benefit those injured in a maritime setting. The cases referred to were *Moragne v. States Marine Lines* (1970) 398 U.S. 375 [26 L.Ed.2d 339, 90 S.Ct. 1772] and *Sea-Land-Services, Inc. v. Gaudet* (1974) 414 U.S. 573 [39 L.Ed.2d 9, 94 S.Ct. 806].

In *Moragne* the United States Supreme Court overruled a long-established precedent in general maritime law and created a new cause of action for wrongful death. In *Gaudet,* a case involving the death of a seaman in state territorial waters, the nation's high court reaffirmed the concept of an independent body of federal maritime law that is dependent

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[5]This case was the subject of a note in 15 San Diego Law Review at pages 309-330. On page 309 the author declared that "[c]ourts sitting in admiralty have so seldomly awarded punitive damages for maritime torts that the event in itself is noteworthy."

on no state or federal statute but is subject to continuing delineation by the federal courts sitting in admiralty.

The *Robinson* (477 F.2d 1048) and *Renner* (403 F.Supp. 849) cases appear to us to be persuasive indications that substantial inroads are being made upon the prior reluctance to impose punitive damages in admiralty cases. We consider the extension made in *Robinson* as totally consistent with the policy of many land-based worker's compensation statutes which penalize the land-based employer who engages in similar reprehensible conduct. It, of course, remains the province of the United States Supreme Court, as well as the individual circuits, to determine the parameters of recovery for a *Moragne*-type wrongful death action.

C. *FELA Precedents Do Not Constitute a Bar to Punitive Damages in Jones Act Cases*

Defendant advances the argument: (1) that Jones Act cases are governed by FELA precedents; and (2) that under those FELA precedents, punitive damages are precluded as a matter of law; so that (3) none can be awarded in a Jones Act case even when the Jones Act cause of action is accompanied by a cause of action for unseaworthiness; because (4) the Jones Act and unseaworthiness causes of action are virtually the same. We reject the argument as untenable and unsupportable.

As we have already indicated, there is ample authority for the first premise advanced by defendant, i.e., that Jones Act cases are governed by FELA precedent. But this premise is not absolute as defendant would have us hold. It is well to be mindful of the admonition of the United States Supreme Court, set forth in *Cox v. Roth* (1955) 348 U.S. 207 [99 L.Ed. 260, 75 S.Ct. 247], that the kinship of railway workers and seamen, as perceived by Congress, should not lead to overly literal or rigid transplanting of principles from

land to sea, or vice versa. Clearly, FELA decisions are persuasive with respect to the Jones Act, but may not be considered to be the ultimate authority.

We recognize that one federal circuit has determined that, in a FELA case, there can be no recovery of punitive damages. In *Kozar v. Chesapeake and Ohio Railway Company* (W.D.Mich. 1970) 320 F.Supp. 335, the district court awarded punitive damages against defendant railway.[6] On appeal, the Sixth Circuit, in 1971, reversed the award on the ground that FELA afforded damages as compensation only rather than for punishment. (*Kozar v. Chesapeake and Ohio Railway Company* (6th Cir. 1971) 449 F.2d 1238.)[7]

Thus, if the Jones Act cause of action in the instant case were controlled by the FELA precedent set forth in *Kozar*, it would appear that punitive damages would be barred on *that* cause of action in the case before us. But we do not consider that *Kozar* is either controlling or persuasive on the question of whether a Jones Act cause of action automatically precludes a recovery of punitive damages. But beyond that, neither *Kozar* nor any of its progeny can be permitted to place limitations on a seaman's cause of action founded on general maritime law that recognizes the unseaworthiness doctrine.

The demonstrated tendency of the United States Supreme Court has been to regard the Jones Act as *primarily* an addition to an even larger body of federal maritime law *whenever* FELA precedent would in some manner *limit* the liability imposed on a defendant shipowner. (See, e.g., *The Arizona v. Anelich* (1936) 298 U.S. 110 [80 L.Ed. 1075, 56 S.Ct. 707] and *Beadle v. Spencer* (1936) 298 U.S. 124

[6]A decision roundly criticized in a note in 71 Columbia Law Review entitled *Punitive Damages Under* FELA at page 1113.

[7]The *Kozar* ruling was followed by a Montana decision (*State* ex rel. *Burlington Northern, Inc. v. Dist. Ct.* (1976) 169 Mont. 480 [548 P.2d 1390].)

[80 L.Ed. 1082, 56 S.Ct. 712].) On such occasions, the United States Supreme Court has called attention to the existence of an independent body of federal law, of which the Jones Act is only a party, and has *not* allowed the Jones Act to be utilized as a conduit through which limitations on liability could pass from land-based law such as FELA doctrines.

While there is considerable overlapping between Jones Act negligence and the doctrine of unseaworthiness, there is simply neither authoritative precedent nor reasons of policy for imposing whatever limitations exist in Jones Act litigation on general federal admiralty law, from which the doctrine of unseaworthiness is derived. On the contrary, all present indications — as expressed in *Moragne and Gaudet* — lead to the conclusion that the United States Supreme Court continues to regard tort actions based on general admiralty law as the particular province of decisional law development and an area where principles are applied with a liberal rather than a restraining hand.

In the context of the present action, the corporate conduct complained of purportedly consisted of making an informed and calculated decision to practice economy in providing defendant's seamen with the safe environment required by the federal law of admiralty and the doctrine of unseaworthiness. The defendant's decision assertedly involved acceptance of the risk that certain seamen might be exposed to substantial injury from high-level noises during the course of their employment. Since we are at the pleading stage, we have before us only the dim outlines of the situation upon which this litigation is based. It is generally recognized, however, that "[e]mployers appear to be in the best position to know or discover workplace health hazards that produce disease [or disability] and to control these hazards."

(*Compensating Victims of Occupational Disease* (1980) 93 Harv.L.Rev. 916, 933.)

It is not necessary for us to determine whether a corporate decision, consciously made for economic reasons, may, on occasion, constitute an evil for which the law allows no redress. Here the plaintiff has alleged a good and valid cause of action for punitive damages, unless federal law precludes the statement of such a cause of action. We hold unequivocally that plaintiff is entitled to present the issue of punitive damages to a jury that there is sufficient authority in federal admiralty law in support of our holding.

Let a peremptory writ of mandate issue, directing the trial court to vacate its order of November 5, 1979, insofar as that order struck plaintiff's allegations concerning punitive damages, and to reinstate those allegations and the prayer as contained in plaintiff's first amended complaint.

Marshall, J.,* concurred.

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*Assigned by the Chairperson of the Judicial Council.

HANSON, J. — I respectfully dissent for the reasons stated in the majority opinion.

In my opinion the ball game is over and the petition should be denied once the majority opinion correctly concluded, as it did, (1) that while litigants may elect to pursue recovery pursuant to the Jones Act (46 U.S.C. § 688) and under the general maritime law doctrine of unseaworthiness in state courts, as distinguished from federal courts (probably for some perceived *procedural* reasons), "The prevailing rule is that, regardless of the forum, federal [maritime] *substantive* law applies" (original italics); (2) that the remedies available under the Jones Act and the unseaworthiness doctrine can produce only one recovery and are now considered "Siamese twins"; and (3) that no federal statute has expressly authorized nor has any federal decisional law awarded punitive damages under circumstances presented in the instant case.

In the clear language the Jones Act adopts the law of the Federal Employers' Liability Act (FELA) (45 U.S.C. § 51 et seq.)[1] which governs actions against railroads (which criss-cross the United States) by their employees, thus making FELA part of the Jones Act for the purposes announced. (See *Engel v. Davenport* (1926) 271 U.S. 33, 38 [70 L.Ed. 813, 817, 46 S.Ct. 410]; *Bell v. Tug Shrike* (E.D.Va. 1963) 215 F.Supp. 377, aff'd. 332 F.2d 330, cert. den. 379 U.S. 844 [13 L.Ed.2d 49, 85 S.Ct. 84]; *Cox v. Dravo Corporation* (3d Cir. 1975) 517 F.2d 620, cert. den. 423 U.S.

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[1]The Jones Act in pertinent part provides: "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of a trial by jury, and *in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railroad employees shall apply; . . .*" (*Italics added.*)

1020 [46 L.Ed.2d 392, 96 S.Ct. 457]; *Dixon v. Grace Lines, Inc.* (1972) 27 Cal.App.3d 278 [103 Cal.Rptr. 595].)

It is also clear that in FELA actions *only* compensatory damages are recoverable. Punitive damages are *not* allowed. (See *Kozar v. Chesapeake and Ohio Railway Company* (6th Cir. 1971) 449 F.2d 1238; see also *State ex rel. Burlington Northern, Inc. v. District Court* (1976) 169 Mont. 480 [548 P.2d 1390, 1392-1393]; *Orona v. Isbrandtsen Co.* (S.D.N.Y. 1962) 204 F.Supp. 777, 779; *Cleveland Tankers v. Tierney* (6th Cir. 1948) 169 F.2d 622, 624; *Vanbeek v. Sabine Towing Co.* (1937) 300 U.S. 342 [81 L.Ed. 685, 57 S.Ct. 452]; *Mpiliris v. Hellenic Lines Ltd.* (S.D.Tex. 1970) 323 F.Supp. 865, 874, aff'd. (1971) 449 F.2d 1163.)

Accordingly, since federal maritime substantive law adopting FELA, as noted above, applies and *not* California substantive law, and since the "Siamese twins" remedies under the Jones Act and Unseaworthiness doctrine can produce only one recovery, it is axiomatic that one "twin" (unseaworthiness doctrine) cannot recover exemplary damages while the other "twin" (the Jones Act) is limited to compensatory damages only. To allow such a result in a "Siamese twin" situation would be illogical.

The majority opinion concedes that recent case law reflects an overwhelming reluctance on the part of the courts sitting in admiralty to award punitive damages and then flatly concludes that since no federal law precludes the plaintiff from presenting the issue of punitive damages to a jury, it is proper for a state court to authorize such damages by decisional law.

While reasonable minds may differ construing statutory and decisional law, in my view there is no federal authority in admiralty whatsoever supporting the majority opinion's determination. The cases cited are factually distinguishable

and the language referred to in those opinions is mere dicta and not binding authority. Nor does the fact that federal law does not expressly prohibit punitive damages in any way license a state court to impress upon the federal system its proclivity to expand the circle of civil liability to infinity. To the contrary, the fact that federal law only allows compensatory damages and does not expressly include exemplary damages indicates that it was not intended that such damages be included in the overall carefully thought out statutory scheme concerning maritime personal injury claims.

In my opinion it is not only highly improper and presumptuous but also grossly unwise for a California state court of review by judicial fiat to invade the federal jurisdiction and attempt to graft onto federal maritime law a punitive damage claim where none presently exists, thereby destroying the important concept of the need to preserve *uniformity* in maritime tort law regardless of the place of injury.[2] The practicality and desirability of preserving a *uniform* federal law in this field is apparent in view of the many states which border the Atlantic and Pacific Oceans, the great Saint Lawrence Seaway into the Great Lakes, and the Gulf of Mexico as well as the numerous interior states by and through which a labyrinth of inland navigable waterways pass.

I would therefore hold as a matter of law that the petitioner may not seek an award of punitive damages in addition to compensatory damages. I would leave to the United States Congress and to the federal courts interpreting federal statutory enactments the determination as to whether or not

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[2]The major premise of the *Jensen Doctrine* (see *Southern Pacific Co. v. Jensen* (1917) 244 U.S. 205 [61 L.Ed. 1086, 37 S.Ct. 524]), which remains good and sound law today, is that maritime law should be *uniform* within the United States. The need for national maritime *unity* was confirmed by the United States Supreme Court in *Knickerbocker Ice Co. v. Stewart* (1920) 253 U.S. 149 [64 L.Ed. 834, 40 S.Ct. 438, 11 A.L.R. 1145].

exemplary damages should be allowable in maritime tort claims.

I would affirm the trial court's order striking plaintiff allegations concerning punitive damages and deny the petition for writ of mandate.[3]

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[3]The result of the majority opinion in my view is disturbing in two other practical aspects which should not be ignored.

First, such a pronouncement by a single state within the union will tend to unnecessarily snarl and foul the lines in the field of maritime tort law which in recent years have slowly become unsnarled and unfouled. (See *The Tangled Seine: A survey of Maritime Personal Injury Remedies* (1947) 57 Yale L.J. 243-274.)

Secondly, there are a great number of companies or individuals who own fleets of vessels, with large crews which sail the seven seas and which are either located in or have business contacts in California, thus subjecting them to the jurisdiction of our state courts. It is reasonably forseeable that litigant's and lawyers from all over the United States (indeed the world) may rush into California courts with their maritime cases seeking "windfall" exemplary damages, thus either sinking our already overcrowded courts into the briny deep or requiring the long suffering California taxpayers to add more courts to act as bilge pumps to process such out of state claims in order to stay afloat. This possibility punctuates the desirability of a *uniform* maritime law and any charges in the present law should be left to federal authorities in order to insure the case load is spread throughout the various states.

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

July 16, 1980. I have this day filed Order Hearing Denied.

In re: 2 Civ. No. 58176. Baptiste vs. Superior Court, Los Angeles.

Respectfully,
Clerk

Minute Order.

Dept. SO J. Date November 5, 1979 Superior Court of California, County of Los Angeles. Honorable Robert A. Wenke, Judge. A. Wick, Deputy Sheriff. V. Morgan, Deputy Clerk. None, Reporter. (Parties and counsel checked if present).

SO C 37003. Gilbert A. Baptiste, vs. Chevron Shipping Company, etc., et al.

NATURE OF PROCEEDINGS:
SUBMITTED MATTER PI OTHER

The demurrers and motion to strike of the defendant, Standard Oil Company of California, having heretofore been submitted on October 26, 1979, the Court now rules as follows:

1. The motion to strike is granted in its entirety. In this regard the Court notes the following: (a) federal law is applicable; (b) there is no authority for punitive damages in a maritime case, though there is some dicta to that effect; (c) in the absence of maritime law on this subject, FELA cases are the most persuasive available authority; (d) punitive damages are not allowable in FELA cases; (e) extensions of substantive law, regardless of their desirability, are better left to the appellate courts—the judicial system functions more effectively if litigants can, at the trial court level, rely on what appears to be the existing status of the law.

2. The motion to strike having been granted, all of the demurrers are overruled. Defendant shall have thirty days in which to answer.

A copy of this minute order is sent by U. S. Mail this date to the following counsel of record:

Lawrence R. Booth, Esq.
Silver and McWilliams
1121 North Avalon Blvd.
Wilmington, Ca. 90744

Jane H. Barrett, Esq.
Lawler, Felix & Hall
700 S. Flower St.
Los Angeles, Ca. 90017

Received: Nov. 8, 1979.

Dept: SO J, Minutes Entered 11-5-79, County Clerk.

Order.

In the Court of Appeal of the State of California. Second Appellate District, Division One.

Gilbert A. Baptiste, Petitioner, v. The Superior Court of Los Angeles County, Respondent, Chevron Shipping Co. (Standard Oil Co. of California), Real Party in Interest. 2 Civil No. 58176. (Super. Ct. No. SO C 37003). (Robert A. Wenke, Judge).

Filed: Jan. 24, 1980.

THE COURT:

The petition for writ of mandate/prohibition, filed December 28, 1979, and real party in interest's reply memorandum, filed January 4, 1980, have been read and considered.

The petition is denied for failure to set forth facts sufficient to justify relief by extraordinary writ.

Received: Jan. 29, 1980. JHB.

In the Supreme Court of the State of California, In Bank. 2nd Civil No. 58176.

Filed: Feb. 20, 1980.

Baptiste, Petitioner, v. The Superior Court of Los Angeles County, Respondent; Chevron Shipping Company, Etc., Real Party in Interest.

Petition for hearing granted. The matter is transferred to this court and retransferred to the Court of Appeal, Second District, Division One, with directions to issue an alternative writ of mandamus and/or prohibition to be heard before that court when the proceeding is ordered on calendar.

BIRD, *Chief Justice*.
MOSK, *Justice*.
MANUEL, *Justice*.
NEWMAN, *Justice*.

APPENDIX "B."

United States Constitution, Article I:

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weight and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; - And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

United States Constitution, Article III:

Section 2, Clause 1. JURISDICTION OF COURTS.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; — to all Cases affecting Ambassadors, other public Ministers and Consuls; — to all Cases of admiralty and maritime Jurisdiction; — to Controversies to which the United States shall be a Party; — to Controversies between two or more States; between a

State and Citizens for another State; — between Citizens of different States; — between Citizens of the same State claiming Lands under Grants or different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

United States Code, Title 46:

§ 688. RECOVERY FOR INJURY TO OR DEATH OF SEAMAN.

Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in some actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

United States Code, Title 45:

§ 51. LIABILITY OF COMMON CARRIERS BY RAILROAD, IN INTERSTATE OR FOREIGN COMMERCE, FOR INJURIES TO EMPLOYEES FROM NEGLIGENCE; DEFINITION OF EMPLOYEES.

Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories,

or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.

§ 52. CARRIERS IN TERRITORIES OR OTHER POSSESSIONS OF UNITED STATES.

Every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole

or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

§ 56. ACTIONS; LIMITATION; CONCURRENT JURISDICTION OF COURTS.

No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued.

Under this chapter an action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this chapter shall be concurrent with that of the courts of the several States.

§ 57. WHO INCLUDED IN TERM ''COMMON CARRIER''.

The term ''common carrier'' as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

FILE
DEC 31

No. 80-586
IN THE

Supreme Court of the United States

October Term, 1980

CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Second Appellate District — Division One.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

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Questions Presented.

1. Should not this Honorable Court refuse to review a pre-trial ruling, relating to state court pleadings, which permits the respondent GILBERT A. BAPTISTE, the plaintiff in an action pending for trial in a trial court of the State of California, to allege in his pleading that certain conduct of defendant warrants the recovery of punitive damages?

2. Should this Honorable Court act at this preliminary and premature stage for the purpose of fashioning and enunciating a rule that owners of vessels and employers of seamen are to be accorded a special exemption from the universal rule respecting liability for punitive damages?

3. Is it not the long-standing and well-settled basic rule of the common law and of maritime law that a tort defendant whose conduct is of a nature that requires deterrence and punishment is responsible for punitive damages? And if so, why should a vessel owner sued under the maritime doctrine of unseaworthiness be exempt from such liability?

TABLE OF CONTENTS

Page

Questions Presented i

Statement of the Case 1

Summary of Argument 3

Argument 4

I.

The Order Sought to Be Reviewed Herein Is Not a Final Judgment or Decree. It Is a Pretrial Ruling in the Nature of a Ruling on a Demurrer. It Is Thus Clearly Not Within This Court's Jurisdiction. 28 USC §1257 4

II.

The Decision of the California Court of Appeal Is Clearly Correct. No Authority Whatever Exists for a Conclusion That There Should Be Created for the Benefit of Petitioner an Exemption From the Well-Settled Law That a Defendant May Be Liable for Punitive Damages Where Its Conduct Warrants It 7

A. It Is Well-Settled That Punitive Damages Are Recoverable Under the General Common Law and Under Maritime Law. It Is Therefore Clear That They May Be Recovered Pursuant to Plaintiff's Cause of Action Under Maritime Law for Unseaworthiness 7

B. Punitive Damages May Also Be Recovered Under the Jones Act 12

C. The California Court of Appeal Properly Applied Federal Decisional Law to the Pleading in This Case 14

Conclusion 16

TABLE OF AUTHORITIES

Cases — Page

American Export Lines, Inc. v. Alvez, ... U.S. ...., 100 S. Ct. 1673 (1980) 6, 7, 10, 11, 12

Boston Mfg. Co. v. Fiske, 3 Fed. Cas. 957 (No. 1681) (C.C. Mass. 1820) 8

Bostwick v. Brinkerhoff, 106 U.S. 3 (1882) 6

Coopers & Lybrand v. Livesay, 437 U.S. 463 (1978) 6

Cox v. Roth, 348 U.S. 207 (1955) 13

Den Norske A.S/S., Petition of, 276 F. Supp. 163 (N.D. Ohio 1967) 8, 13

Gallagher v. The Yankee (C.C.N.D. Cal. 1859) 9 Fed. Cas. 1091 (No. 5196), aff'd 30 Fed. Cas. 781 (No. 18124) 8

Gunnip v. Warner Co., 43 F.R.D. 365 (E.D. Pa. 1968) 8, 13

Kozar v. Chesapeake & Ohio R. Co., 449 Fed. 2d 1238 (6th Cir. 1971) 13, 14, 15

Kwak Hyung Rok v. Continental Seafoods Inc., 462 F. Supp. 894 (D.C. Ala. 1978), aff'd 614 Fed. 2d 292 (5th Cir. 1980) 9

Lake Shore & C. Railway Co. v. Prentice, 147 U.S. 1 (1893) 8

Lavine v. Jessup, 48 Cal. 2d 611, 311 Pac. 2d 8 (1957) 5

Marine Sulphur Queen, In Re, 460 Fed. 2d 89 (2d Cir. 1972), cert. den. 409 U.S. 982 (1972) 8

Meagher v. Minnesota Thresher Mfg. Co., 145 U.S. 608 (1892) 6

Missouri & K.I.R. Co. v. Olathe, 222 U.S. 185 (1911) 5, 6

Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960) 11

Page

Moragne v. States Marine Lines, 398 U.S. 375 (1970) 11, 12, 14

Ralston v. The States Rights, 20 Fed. Cas. 201 (No. 11540) (E.D. Pa. 1836) 8

Renner v. Rockwell Inc. Corp., 403 F. Supp. 849 (D.C. Cal. 1975), reversed on other grounds, 587 Fed. 2d 1030 (9th Cir. 1978) 9

Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573 (1974) 12

Seas Shipping Co. v. Sieracki, 328 U.S. 85 (1946) .. 11

Southern Pac. Co. v. Gileo 351 U.S. 493 (1956) 5

Sullivan v. Wright, 124 Cal. App. 2d 836, 269 Pac. 2d 671 (1954) 5

The Amiable Nancy, 16 U.S. (3 Wheat.) 546 (1818) 8

United States Steel v. Furhman, 407 Fed. 2d 1143 (6th Cir. 1969) 8

Vickers v. Tumey, 290 Fed. 2d 426 (5th Cir. 1961) 13, 14

Werner v. Charleston, 151 U.S. 360 (1894) 6

Wilson v. Sharp, 42 Cal. 2d 675, 268 Pac. 2d 1062 (1954) 5

Zeller v. Switzer, 91 U.S. 487 (1875) 6

Statutes

United States Code, Title 28, Sec. 1257 ..... 3, 4, 5, 6

United States Code, Title 28, Sec. 1257(3) 5

United States Code, Title 46, Sec. 688 1

Page

Treatises

Prosser, Law of Torts (4th ed. 1971), Sec. 2, p. 11 ..... 7, 8

2 Sutherland, Damages (9th ed. 1912), Sec. 599(b) 9

2 Sutherland, Damages (4th ed. 1916), Sec. 392 9

3 Witkin, California Procedure (2d ed.), Secs. 860-868, pp. 2464-2470 5

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IN THE

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CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

Gilbert A. Baptiste, a seaman, filed an action in the Superior Court of the State of California for the County of Los Angeles, to recover for personal injuries sustained while in the course of his employment with petitioner, the defendant in said action. Mr. Baptiste alleged three causes of action in his complaint: (1) a cause of action under the Jones Act, 46 USC §688, (2) a cause of action under the general maritime law for unseaworthiness and (3) a cause of action for maintenance and cure (Appendix A, pp. 11-13).[1] The basic injury alleged was loss of hearing, due to engine room

[1]References to Appendix A refer to the Appendix annexed to the Petition for Certiorari. Appendix A constitutes the opinion of the California Court of Appeal to which the present Petition is addressed.

noise in the vessels upon which Mr. Baptiste worked, and which were owned by petitioner.

In the course of pretrial proceedings, Mr. Baptiste discovered that during the period of his employment with petitioner-defendant, petitioner-defendant had become fully aware that these noise levels would cause permanent loss of hearing to seamen working on these vessels (Appendix A at pp. 3-4). Petitioner could have eliminated this threat to its employees' hearing by the expenditure of sums of between $800 and $6,500 per vessel (*id.* at p. 4). Petitioner consciously decided not to eliminate the deafening condition, and decided instead to continue to expose its employees to being deafened by it, because that was the "cheapest" solution (*ibid.*).

Upon discovering the foregoing, Mr. Baptiste moved to amend his complaint to allege a cause of action for punitive damages (Appendix A at pp. 4-5). This motion was granted by the California Superior Court (*id.* at p. 5). Petitioner then moved to strike the allegation, based on the contention that a vessel owner and employer of a seaman is not subject to punitive damages (*ibid.*). After various proceedings, the California Court of Appeal for the Second Appellate District held that under federal maritime law punitive damages could be recovered against petitioner upon suitable proof that it had engaged in conduct sufficiently outrageous to merit them, and that the fact that such outrageous conduct is that of a vessel owner and employer of a seaman furnishes no basis whatever for exempting petitioner from a rule applicable to virtually all other wrong-doers. The Court of Appeal therefore ordered that Mr. Baptiste be permitted to plead, and attempt to prove, that he is entitled to recover punitive damages against petitioner.

The case has not yet been brought to trial, and no judgment, final or otherwise, has yet been rendered. Neverthe-

less, by its instant petition, petitioner wishes this Court to grant a Writ of Certiorari, for the purpose of ordering the California Superior Court: (1) to strike Mr. Baptiste's pleading alleging that petitioner's conduct warrants a punitive damage award and (2) to conduct the trial of the instant case without reference to any punitive damage claims. Petitioner does not wish the trier of fact to hear or determine the question concerning whether petitioner's conduct warrants a punitive damage award and, to that end, petitioner asks this Court to intervene at the pretrial stage of this proceeding.

Summary of Argument.

1. The petition should not be entertained because the order of the Court of Appeal denying petitioner's motion to strike the punitive damage allegations is not a final judgment or decree, as required by 28 USC §1257 (see Point I, *infra*).

2. The petition should not be entertained because the decision of the Court of Appeal is correct. No authority whatever exists for creating an exception to the well-settled rule that a defendant is responsible for punitive damages where the proof of such defendant's conduct establishes that such damages are warranted (see Point II, *infra*).

ARGUMENT.

I.

The Order Sought to Be Reviewed Herein Is Not a Final Judgment or Decree. It Is a Pretrial Ruling in the Nature of a Ruling on a Demurrer. It Is Thus Clearly Not Within This Court's Jurisdiction. 28 USC §1257.

As pointed out above, petitioner asks this Court to review on certiorari an order denying a motion to strike certain allegations of respondent's pleading filed in the California Superior Court. This case has not yet proceeded to trial.[2] Regardless of the issue of punitive damages, this case must be tried on the issue of petitioner's liability on the various causes of action for compensatory damages, and on the issue of the nature and amount of such damages. These issues involve the application of federal law. The issue of punitive damages thus is not the only federal issue in this case. And trial of such issue will not even appreciably affect the trial time of this case.

It is, of course, possible that the result of a trial of this case will render the issue of punitive damages moot. The trier of fact could make a factual determination that the evidence adduced at the trial with respect to petitioner's conduct does not warrant an assessment of punitive damages. If, in fact, punitive damages are assessed against petitioner by the trier of fact, petitioner will have a right, pursuant to California law, to a review of that determination on appeal from a judgment against it. And such an appeal will review *concrete evidence*, and *not merely pleading allegations*.

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[2]The trial date is presently scheduled for April, 1981.

The statute which petitioner claims confers jurisdiction on this Court is 28 USC §1257(3) (Petition for Writ of Certiorari at p. 1). That statute plainly limits this Court's jurisdiction to consideration of "*(f)inal* judgments or decrees rendered by the highest court of a State in which a decision could be had." (emphasis added). Petitioner's petition to this Court nowhere states on what basis petitioner claims that the instant order can possibly be considered a final judgment or decree. We are therefore unable to fathom the foundation on which petitioner seeks to invoke the jurisdiction of this Court, since all of the authorities uniformly hold that an order such as the present order is not a final judgment or decree, within the meaning of 28 USC §1257.

Petitioner's motion to strike certain allegations of respondent's complaint was akin to a demurrer, and California law considers it as such. See, *e.g., Lavine v. Jessup,* 48 Cal. 2d 611, 311 Pac. 2d 8 (1957). See, generally, 3 Witkin, "California Procedure" (2d ed.), Pleading, §§860-868, pp. 2464-2470. Such motions to strike are used under California practice to attack the allegations of a party's pleadings for legal or factual insufficiency. *Lavine v. Jessup, supra.* See also *Wilson v. Sharp,* 42 Cal. 2d 675, 268 Pac. 2d 1062 (1954); *Sullivan v. Wright,* 124 Cal. App. 2d 836, 269 Pac. 2d 671 (1954). In the present case, petitioner's motion to strike performed the precise function of a demurrer, since it asserted the claim that the allegations of the pleading respecting punitive damages were legally insufficient on their face.

It is well-settled that the action of the highest state court with respect to a lower court's ruling sustaining or overruling a demurrer, motion to dismiss, or similar pretrial motion, is not a final judgment or decree, as that term is used in 28 USC §1257. See, *e.g.: Southern Pac. Co. v. Gileo,* 351 U.S. 493 (1956); *Missouri & K.I.R. Co. v. Olathe,* 222

U.S. 185 (1911); *Werner v. Charleston*, 151 U.S. 360 (1894); *Meagher v. Minnesota Thresher Mfg. Co.*, 145 U.S. 608 (1892); *Bostwick v. Brinkerhoff*, 106 U.S. 3 (1882); *Zeller v. Switzer*, 91 U.S. 487 (1875).

And in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467, 468 (1978), this Court said:

> "Federal appellate jurisdiction generally depends on the existence of a decision [there, by the District Court] that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment [citation].' * * * To come within the 'small class' of decisions excepted from the final-judgment rule . . ., the order must conclusively determine the disputed question, *resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment.*"
>
> 437 U.S. at pp. 467, 468 (emphasis added).

Any exceptions to the foregoing rule, if any, are of very limited application, and, as previously observed, petitioner has not even attempted to explain how the instant circumstances could conceivably come within any such exception.[3]

An example of the rare circumstance where a seemingly non-final order was held to be "final" for purposes of §1257 appears in *American Export Lines, Inc. v. Alvez*, ... U.S. ...., 100 S. Ct. 1673 (1980). Therein, plaintiff brought an action for negligence and unseaworthiness, and sought leave to amend his complaint to add his spouse as a plaintiff for loss of society. This Court held that the finality requirement was satisfied, because the case had been tried, and only the

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[3]It was obviously incumbent on petitioner to establish jurisdiction in its petition. Perhaps petitioner was contemplating purporting to meet this issue in a reply brief, on the hypothesis that respondent would not be accorded any meaningful opportunity to respond. Such a procedure would not, we respectfully submit, be proper.

federal question before this Court remained in the litigation (100 S. Ct. at pp. 1675-1676). However, this Court reiterated the general rule that an order with respect to a pleading is not a final order (*id.* at p. 1675).

It is clear that the case at bar squarely comes within the general rule, and not within one of the rare exceptions thereto. Petitioner is requesting this Court to examine this case piecemeal, and to render an advisory opinion on a question which might prove to be unnecessary and irrelevant to a complete disposition of the litigation.

It is respectfully submitted that the instant petition should be denied on this ground alone.

II.

The Decision of the California Court of Appeal Is Clearly Correct. No Authority Whatever Exists for a Conclusion That There Should Be Created for the Benefit of Petitioner an Exemption From the Well-Settled Law That a Defendant May Be Liable for Punitive Damages Where Its Conduct Warrants It.

A. It Is Well-Settled That Punitive Damages Are Recoverable Under the General Common Law and Under Maritime Law. It Is Therefore Clear That They May Be Recovered Pursuant to Plaintiff's Cause of Action Under Maritime Law for Unseaworthiness.

It is well-settled under the basic common law that a defendant may be liable in punitive damages where its conduct warrants it. This fundamental proposition is set forth in the very first chapter of the leading text authority on the subject of torts. Prosser, "Law of Torts" (4th ed. 1971). Therein, the author states that *punitive damages "are an established part of our legal system,* and there is no indication of any

present desire or tendency to abandon them." (Prosser, *supra*, §2, p. 11 [emphasis added])[4]

This right to recover punitive damages is universally recognized in the federal common law (see, *e.g.*, *Lake Shore & C. Railway Co. v. Prentice*, 147 U.S. 1 [1893]), and has been repeatedly recognized in maritime law and the law of admiralty. See, *e.g.*: *The Amiable Nancy*, 16 U.S. (3 Wheat.) 546 (1818) (marine trespass); *Gallagher v. The Yankee* (C.C.N.D. Cal. 1859) 9 Fed. Cas. 1091 (No. 5196), aff'd 30 Fed. Cas. 781 (No. 18124) (involuntary transporting of plaintiff); *In Re Marine Sulphur Queen*, 460 Fed. 2d 89, 105 (2d Cir. 1972), cert. den., 409 U.S. 982 (1972) (dictum that punitive damages may be awarded where defendant's conduct warrants it); *Gunnip v. Warner Co.*, 43 F.R.D. 365 (E.D. Pa. 1968) (plaintiff permitted to amend complaint in Jones Act action to include punitive damages against vessel owner); *Petition of Den Norske A.A/S.*276 F. Supp. 163 (N.D. Ohio 1967) (holding that punitive damages are recoverable in admiralty and under the Jones Act), reversed, *United States Steel v. Fuhrman*, 407 Fed. 2d 1143 (6th Cir. 1969) (reversing because the evidence failed to establish corporate liability for the misconduct, but indicating that punitive damages *are* recoverable against the owner of a vessel when the owner authorized or ratified the objectionable conduct); *Ralston v. The States Rights*, 20 Fed. Cas. 201 (No. 11,540) (E.D. Penn. 1836) (punitive damages may be awarded against the owners of a vessel); *Boston Mfg. Co. v. Fiske*, 3 Fed. Cas. 957 (No. 1681) (C.C. Mass. 1820) (dictum that punitive damages may be recovered in

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[4]Indeed, petitioner concedes, albeit grudgingly, that punitive damages are a virtually universal part of the common law in the United States (Petition, p. 18, FN 12). Petitioner is able to cite only four jurisdictions in the United States which, petitioner claims, do not allow them (Nebraska, New Hampshire, Louisiana and Washington).

cases of maritime torts); *Kwak Hyung Rok v. Continental Seafoods, Inc.*, 462 F. Supp. 894 (D.C. Ala. 1978), affirmed 614 Fed. 2d 292 (5th Cir. 1980) (dictum that punitive damages may be recovered in a maritime action where a defendant's conduct is accompanied by wilful, wanton or malicious acts or the equivalent); *Renner v. Rockwell Inc. Corp.*, 403 F. Supp. 849, 852 (D.C. Cal. 1975) (holding punitive damages are recoverable in an action for wrongful death under general maritime law), reversed on other grounds, 587 Fed. 2d 1030 (9th Cir. 1978) (holding action barred by statute of limitations). See also: 2 Sutherland, "Damages," §392 (4th ed. 1916) and 2 Sedgwick, "Damages," §599(b) (9th ed. 1912).

Conversely, there is no authority anywhere that holds that punitive damages may *not* be recovered against a defendant under maritime law. Thus, by the instant petition, petitioner asks this Court to carve an anomalous exception to the universal rule of law allowing punitive damages, based on petitioner's *status* as a vessel owner and employer of a seaman.

Petitioner has not set forth any reason whatever why it should be accorded such unique favored treatment. Thus, the issue here is not the correctness or desirability of the universal rule permitting punitive damages to be recovered. The issue is whether one particular class of defendants should be exempt from the operation of this rule for no reason at all.

As we understand petitioner's argument, it is based on the premise (questionable, as will be seen [subsection B, *infra*]) that the Jones Act precludes recovery for punitive damages (Petition, Points II and III, pp. 5-11). From this premise, petitioner arrives at the conclusion that punitive damages are *also* barred under the maritime law (Petition, Point IV, pp. 11-13).

However, it is well-settled that whatever the result under the Jones Act cause of action pleaded by respondent (as to which, see subsection B, *infra*), the claim under the maritime doctrine of unseaworthiness is a separate and distinct claim from that under the Jones Act. This Court has made this proposition painstakingly clear.

Thus, in the recent decision of this Court in *American Export Lines, Inc. v. Alvez, supra,* .... U.S. ...., 100 S. Ct. 1673 (1980), plaintiff brought an action against a vessel owner under the maritime doctrine of unseaworthiness. As indicated above, plaintiff sought leave to add his spouse as a plaintiff on a claim for loss of society.

The vessel owner in *Alvez* advanced the identical argument that petitioner herein asserts — that no right to recover has been recognized under the Jones Act (or the Death on the High Seas Act [DOHSA]), and that therefore there could be no recovery under the general maritime law (100 S. Ct. at p. 1677).

This Court rejected that argument. This Court held that neither the Jones Act nor DOHSA "embodies an 'established and inflexible' rule" foreclosing recognition of a claim under general maritime law (100 S. Ct. at p. 1678). This Court said that the Jones Act may not be read "as sweeping aside general maritime law remedies." (*ibid.*).

This Court said:

> "the Jones Act does not exhaustively or exclusively regulate longshoremen's remedies. [citations]. *Furthermore, the Jones Act lacks such preclusive effect even with respect to true seamen; thus, we have held that federal maritime law permits the dependents of seamen killed within territorial seas to recover for violation of a duty of seaworthiness that entails a stricter standard of care than the Jones Act.* [citations].
>
> "*Apart from the question of statutory pre-emption,*

the liability schemes incorporated in DOHSA and the Jones Act should not be accorded overwhelming analogical weight in formulating remedies under general maritime law. The two statutes were enacted within days to address related problems — yet they are 'hopelessly inconsistent with each other.' [citation]. *The Jones Act itself was not the product of careful drafting or attentive legislative review* [citation]; *assuming that the statute bars damages for loss of society, it does so solely by virtue of judicial interpretation of the Federal Employers' Liability Act,* 45 U.S.C. § 51 *et seq.*, which was incorporated into the Jones Act [citation]. *Thus, a remedial omission in the Jones Act is not evidence of considered congressional policymaking that should command our adherence in analogous contexts.*''

100 S. Ct. at pp. 1678-1679 (emphasis added)

This Court then reiterated the basic principle that admiralty jurisprudence ''has always been inspirited with a 'special solicitude for the welfare of those men who under[take] to venture upon hazardous and unpredictable sea voyages.' '' (100 S. Ct. at p. 1679).

Numerous other authorities similarly establish that claims under the maritime law doctrine of unseaworthiness are separate and distinct from claims under the Jones Act. See, *e.g.*: *Moragne v. States Marine Lines,* 398 U.S. 375, 399 (1970); *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 548 (1960); *Seas Shipping Co. v. Sieracki,* 328 U.S. 85, 94, 95 (1946).

And the authorities similarly establish that the measure of damages under the general maritime law *is based upon the prevailing general law,* and *not* upon the terms of particular statutes such as the Jones Act or DOHSA. Thus, for example, in *American Export Lines, Inc. v. Alvez, supra,* this Court held that recovery for loss of society should be

permitted *on the basis of "prevailing views"* about compensation for loss of society, *regardless of whether or not it is allowed under the Jones Act or DOHSA* (100 S. Ct. at p. 1679 [emphasis added]). And in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573, 584 (1974), this Court held that recovery for loss of society would be permitted on the basis of "numerous" state statutes allowing such recovery. The fact that such recovery is apparently not permitted under DOHSA is immaterial. And in *Moragne v. States Marine Lines, Inc., supra*, 398 U.S. 375 (1970), this Court held that where the rule permitting recovery for wrongful death is in force in the overwhelming majority of jurisdictions by statute, the general maritime law will follow the majority rule.[5]

It is therefore clear that punitive damages may be recovered under general maritime law, on the cause of action for unseaworthiness, regardless of the state of the law with respect to the Jones Act.

Moreover, as we will now show, there is nothing in the Jones Act, or the decisions thereunder, which compels the conclusion that punitive damages are not recoverable under the Jones Act.

B. Punitive Damages May Also Be Recovered Under the Jones Act.

By reason of the fact that, as just shown, punitive damages are recoverable on the cause of action under the general maritime doctrine of unseaworthiness, it is unnecessary to determine whether or not punitive damages are also re-

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[5]In view of the foregoing authorities, we are at a complete loss to comprehend the basis upon which petitioner can advise this Court that "federal decisional law is unwavering in its view that the same measure of compensatory damages must be recovered in actions based on unseaworthiness and the Jones Act" (Petition at p. 13). It is manifest that petitioner's attempt to invoke this Court's jurisdiction on the basis of this totally inaccurate statement (see Point IV of Petition at pp. 11-13) is utterly without merit.

coverable under the Jones Act (And, in fact, the California Court of Appeal made no ruling on this issue [see subsection C, *infra*]). Nevertheless, we will briefly discuss this proposition, since petitioner asserts in its brief that Jones Act cases are somehow exempt from the universal rule that punitive damages are awardable when the facts warrant it (Petition at pp. 5-7).

No authority has ever proclaimed such a rule. The cases cited by petitioner in purported support thereof (Petition at pp. 5-7) do not rule on the question. The only authorities that have discussed it have recognized that punitive damages are recoverable under the Jones Act. See, *e.g., Gunnip v. Warner Co., supra; Petition of Den Norske A.A/S., supra.*

Petitioner urges that the Jones Act is governed by FELA precedents, and that it has been held by one Circuit Court of Appeals, in *Kozar v. Chesapeake & Ohio R. Co.*, 449 Fed. 2d 1238 (6th Cir. 1971), that punitive damages are not recoverable under the FELA (Petition, Point III at pp. 7-11).

It is, however, well settled that the Jones Act is not *necessarily* controlled by FELA precedents. Thus, in *Cox v. Roth*, 348 U.S. 207 (1955), this Court stated that the provisions of the FELA should not be mechanically applied to maritime claims, but that the maritime setting must be considered in interpreting the Jones Act. And in *Vickers v. Tumey*, 290 Fed. 2d 426 (5th Cir. 1961), the Court of Appeals pointed out that because we are dealing "with a statute transplanted from the switchyard to navigable waters," the incorporation of the FELA by the Jones Act did not require identical standards and application (290 Fed. 2d at p. 429). This would be "clearly wrong because it would ignore the essential differences in conditions and circumstances of employment." (*id.* at pp. 429-430). *An important and significant factor supporting a distinction*

"is the traditional idea of the duty to provide a seaworthy vessel." (*id.* at p. 430 [emphasis added]).[6] It is therefore clear that the anomalous decision in *Kozar, supra,* is not determinative, even were the present action solely a Jones Act case and even if it did not also involve a cause of action under the general maritime law.[7]

C. The California Court of Appeal Properly Applied Federal Decisional Law to the Pleading in This Case.

Petitioner's final point (Point V at pp. 13-19 of Petition) is, in essence, that the California Court of Appeal had no power to make a ruling with respect to an issue of federal law presented to it by reason of state court jurisdiction to hear cases brought by injured seamen invoking maritime law and the Jones Act. This point is manifestly without merit. The California Court of Appeal was required to rule on the applicable federal law. It properly applied the federal law to the issues before it, and properly refused to bestow on petitioner an unprecedented and anomalous immunity not found in the applicable federal law.

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[6]Cogent support for the distinction is demonstrated by the fact that the seaman is confined to a vessel at sea, and is therefore forced against his will to submit to unsafe working conditions for extended periods of time. A railroad worker, on the other hand, may be subjected to such conditions during the course of a work day, after which he may call the condition to the attention of his employer, request correction of the condition and refuse to continue to work in an unsafe enviornment. The deliberate refusal to correct an unsafe work enviornment is thus clearly more blameworthy in connection with a vessel than in connection with a railroad.

[7]*Kozar* involved a claim for punitive damages for wrongful death, and the Court of Appeals therein relied primarily upon dictum in cases ruling on wrongful death actions (see, *e.g.*, 449 Fed. 2d at pp. 1241-1243). The cases relied on are outmoded, and were influenced by the old rule that wrongful death damages were not recoverable in the absence of a statute specifically authorizing same. Subsequent to those cases, this Court held that this " 'barbarous' " common law rule will no longer be applied, and certainly not in maritime cases. *Moragne v. States Marine Lines, Inc, supra,* 398 U.S. 375, 381 (1970).

Contrary to petitioner's assertions (Petition at pp. 16-19), the California Court of Appeal did not expand any federal statute. That Court pointed out the well-settled rules that punitive damages are part of the general common law (opinion of the Court of Appeal, Appendix A, annexed to petition, at pp. 7-8), the federal common law (*id.* at pp. 8-9) and the federal maritime law (*id.* at pp. 9-11, 14-17). The Court of Appeal therefore held that punitive damages were recoverable on the cause of action under maritime law for unseaworthiness (*id.* at pp. 19, 20).

The Court of Appeal addressed defendant's argument that punitive damages cannot be awarded under the Jones Act, by reason of the FELA decision in *Kozar, supra* (Appendix A at pp. 17-18). The Court noted that if the Jones Act cause of action was controlled by the *Kozar* decision, "it would appear that punitive damages would be barred on *that* cause of action" (*id.* at p. 18 [emphasis in original]). The Court noted cases indicating that punitive damages *could* be recovered under the Jones Act (*id.* at pp. 14-17), and therefore expressed doubt that *Kozar* controlled (*id.* at p. 18). The Court then said that, in any event, "neither *Kozar* nor any of its progeny can be permitted to place limitations on a seaman's cause of action founded on general maritime law that recognizes the unseaworthiness doctrine." (*ibid.*)

The Court then said:

> "While there is considerable overlapping between Jones Act negligence and the doctrine of unseaworthiness, there is simply neither authoritative precedent nor reasons of policy for imposing whatever limitations exist in Jones Act litigation on general federal admiralty law, from which the doctrine of unseaworthiness is derived."
>
> Appendix A at p. 19.

The Court concluded that "there is sufficient authority in federal *admiralty* law" to support recovery of punitive damages (Appendix A at p. 20 [emphasis added]).

It is thus clear that the Court of Appeal did not rule on whether or not punitive damages could be recovered on the cause of action under the Jones Act. Its holding was limited to the unassailable conclusion that the general maritime law did not exempt a ship owner from a liability for punitive damages that has been part of the general law, the common law and the maritime law of this country from its inception.

There is therefore no basis whatever for petitioner's claim that the instant decision expanded a federal statute.

Conclusion.

No final judgment or decree has been rendered herein, and hence jurisdiction is absent. Moreover, the decision of the California Court of Appeal is manifestly correct on the merits. Punitive damages are clearly recoverable under the general common law and under maritime law. Petitioner's attempt to secure for itself a special privilege and immunity from the operation of this law — and to avoid a trial on the merits of the factual issues respecting its conduct — is without merit and does not commend itself to the attention of this Court.

The petition should therefore be denied.

Respectfully submitted,

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No. 80-586

IN THE

Supreme Court of the United States

October Term, 1980

CHEVRON SHIPPING COMPANY (STANDARD OIL COMPANY OF CALIFORNIA),

Petitioner,

vs.

GILBERT A. BAPTISTE,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, Second Appellate District — Division One.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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ARGUMENT.

I

THIS COURT HAS JURISDICTION UNDER 28 U.S.C. §1257

Respondent, Gilbert Baptiste, contends this Court has no jurisdiction under 28 U.S.C. §1257(3) on the basis that the California Supreme Court's denial of petitioner's (Standard Oil Company of California) Petition for Hearing is not a final judgment reviewable by this Court. This contention is erroneous for several reasons.

First, under California law the denial of a petition for extraordinary relief by the California Supreme Court after a determination on the merits by the California Court of Appeal is a final determination. CAL. CIV. PROC. CODE §1064 (West). In California, petitioner is forever foreclosed from further petitioning or appealing the legal issue of whether punitive damages are available under federal maritime law. The California Courts consider the legal issue

resolved and will not disturb it regardless of the outcome at trial. Consequently, the important legal issue of whether punitive damages are allowable under the Jones Act (46 U.S.C. §688) or federal maritime doctrine of unseaworthiness is effectively unreviewable on appeal from a judgment after trial. Petitioner's only recourse is to this Court.

Second, this Court has squarely held that a denial by the California Supreme Court of a petition for extraordinary relief is a final judgment reviewable under 28 U.S.C. §1257. *Madruga v. Superior Court*, 346 U.S. 556, 557 (1953).

Finally, the decision of the California Courts to severely alter federal maritime law will erode long standing federal policy requiring uniformity in maritime matters and restricting states from interfering with established maritime law. If this Court does not accept review of petitioner's writ, the California Courts' erroneous decision, which dramatically expands federal maritime law, will remain the rule of law in direct conflict with decisions of lower federal courts as well as decisions of this Court.

This Court has jurisdiction under 28 U.S.C. §1257(3) and should entertain a hearing to resolve whether the California State Courts can judicially modify federal maritime law by allowing the recovery of punitive damages under the Jones Act (46 U.S.C. §688) and federal doctrine of unseaworthiness.

It is respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

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ARGUMENT.

I.

Petitioner's Reply Arguments Are Meritless and Untimely.

As previously set forth in respondent's Answer to Petition for Writ of Certiorari, petitioner has failed to meet its burden of establishing jurisdiction under 28 USC § 1257. Petitioner, in its Reply brief, raises three untenable points for the first time, in an unconvincing attempt to argue that the final judgment rule has been satisfied. Had petitioner properly raised these points in its opening brief in the first place, respondent would have had the opportunity to respond in depth. Due to time constraints, respondent cannot reply in detail but the points raised are obviously fallacious.

For example, petitioner has cited no cases which deal with pleading questions or pretrial interlocutory decrees like that involved in the instant case. Petitioner instead misdirects this Court's attention to the case of *Madruga v. Superior Court*, 346 U.S. 556 (1953), which involves whether or not a state court had original jurisdiction to even hear an action determined not to be one in rem in admiralty.

The issues presented by the *Madruga* facts are far removed from the pleading question involved herein, whereas the cases cited in respondent's Answer involving pretrial pleading determinations are clearly applicable. These cases hold that the final judgment rule is not satisfied when the decree or order in question does not effectively end the litigation on the merits and the ruled-upon matter remains inseparable from the other major issues to be tried.

In *Gospel Army v. Los Angeles*, 331 U.S. 543, 546-547 (1947), in the course of determining that a judgment of the California Supreme Court was not a final judgment for the purposes of the rule, this Court states:

> " '[T]he test is not whether under local rules of practice the judgment is denominated final . . . but rather whether the record shows that the order of the appellate court has in fact fully adjudicated rights and that the adjudication is not subject to further review by a state court. . . .' [citation]."

The petition should therefore be denied.

Respectfully submitted,

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